

**42 U.S.C.A. § 6903**

United States Code Annotated Currentness

Title 42. The Public Health and Welfare

    └ Chapter 82. Solid Waste Disposal (Refs & Annos)

        └ Subchapter I. General Provisions

            ⇒ **§ 6903. Definitions**

As used in this chapter:

**(1)** The term "Administrator" means the Administrator of the Environmental Protection Agency.

**(2)** The term "construction," with respect to any project of construction under this chapter, means (A) the erection or building of new structures and acquisition of lands or interests therein, or the acquisition, replacement, expansion, remodeling, alteration, modernization, or extension of existing structures, and (B) the acquisition and installation of initial equipment of, or required in connection with, new or newly acquired structures or the expanded, remodeled, altered, modernized or extended part of existing structures (including trucks and other motor vehicles, and tractors, cranes, and other machinery) necessary for the proper utilization and operation of the facility after completion of the project; and includes preliminary planning to determine the economic and engineering feasibility and the public health and safety aspects of the project, the engineering, architectural, legal, fiscal, and economic investigations and studies, and any surveys, designs, plans, working drawings, specifications, and other action necessary for the carrying out of the project, and (C) the inspection and supervision of the process of carrying out the project to completion.

**(2A)** The term "demonstration" means the initial exhibition of a new technology process or practice or a significantly new combination or use of technologies, processes or practices, subsequent to the development stage, for the purpose of proving technological feasibility and cost effectiveness.

**(3)** The term "disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

**(4)** The term "Federal agency" means any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation, and the Government Printing Office.

**(5)** The term "hazardous waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may--

**(A)** cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

**(B)** pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

**(6)** The term "hazardous waste generation" means the act or process of producing hazardous waste.

**(7)** The term "hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

**(8)** For purposes of Federal financial assistance (other than rural communities assistance), the term "implementation" does not include the acquisition, leasing, construction, or modification of facilities or

equipment or the acquisition, leasing, or improvement of land.

**(9)** The term "intermunicipal agency" means an agency established by two or more municipalities with responsibility for planning or administration of solid waste.

**(10)** The term "interstate agency" means an agency of two or more municipalities in different States, or an agency established by two or more States, with authority to provide for the management of solid wastes and serving two or more municipalities located in different States.

**(11)** The term "long-term contract" means, when used in relation to solid waste supply, a contract of sufficient duration to assure the viability of a resource recovery facility (to the extent that such viability depends upon solid waste supply).

**(12)** The term "manifest" means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

**(13)** The term "municipality" (A) means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law, with responsibility for the planning or administration of solid waste management, or an Indian tribe or authorized tribal organization or Alaska Native village or organization, and (B) includes any rural community or unincorporated town or village or any other public entity for which an application for assistance is made by a State or political subdivision thereof.

**(14)** The term "open dump" means any facility or site where solid waste is disposed of which is not a sanitary landfill which meets the criteria promulgated under section 6944 of this title and which is not a facility for disposal of hazardous waste.

**(15)** The term "person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.

**(16)** The term "procurement item" means any device, good, substance, material, product, or other item whether real or personal property which is the subject of any purchase, barter, or other exchange made to procure such item.

**(17)** The term "procuring agency" means any Federal agency, or any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract.

**(18)** The term "recoverable" refers to the capability and likelihood of being recovered from solid waste for a commercial or industrial use.

**(19)** The term "recovered material" means waste material and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process.

**(20)** The term "recovered resources" means material or energy recovered from solid waste.

**(21)** The term "resource conservation" means reduction of the amounts of solid waste that are generated, reduction of overall resource consumption, and utilization of recovered resources.

**(22)** The term "resource recovery" means the recovery of material or energy from solid waste.

**(23)** The term "resource recovery system" means a solid waste management system which provides for collection, separation, recycling, and recovery of solid wastes, including disposal of nonrecoverable waste residues.

**(24)** The term "resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

**(25)** The term "regional authority" means the authority established or designated under section 6946 of this title.

**(26)** The term "sanitary landfill" means a facility for the disposal of solid waste which meets the criteria published under section 6944 of this title.

**(26A)** The term "sludge" means any solid, semisolid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effects.

**(27)** The term "solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 1342 of Title 33, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923) [42 U.S.C.A. § 2011 et seq.].

**(28)** The term "solid waste management" means the systematic administration of activities which provide for the collection, source separation, storage, transportation, transfer, processing, treatment, and disposal of solid waste.

**(29)** The term "solid waste management facility" includes--

**(A)** any resource recovery system or component thereof,

**(B)** any system, program, or facility for resource conservation, and

**(C)** any facility for the collection, source separation, storage, transportation, transfer, processing, treatment or disposal of solid wastes, including hazardous wastes, whether such facility is associated with facilities generating such wastes or otherwise.

**(30)** The terms "solid waste planning", "solid waste management", and "comprehensive planning" include planning or management respecting resource recovery and resource conservation.

**(31)** The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

**(32)** The term "State authority" means the agency established or designated under section 6947 of this title.

**(33)** The term "storage", when used in connection with hazardous waste, means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste.

**(34)** The term "treatment", when used in connection with hazardous waste, means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

**(35)** The term "virgin material" means a raw material, including previously unused copper, aluminum, lead, zinc, iron, or other metal or metal ore, any undeveloped resource that is, or with new technology will become, a source of raw materials.

**(36)** The term "used oil" means any oil which has been--

**(A)** refined from crude oil,

**(B)** used, and

**(C)** as a result of such use, contaminated by physical or chemical impurities.

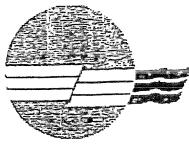
**(37)** The term "recycled oil" means any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes oil which is re-refined, reclaimed, burned, or reprocessed.

**(38)** The term "lubricating oil" means the fraction of crude oil which is sold for purposes of reducing friction in any industrial or mechanical device. Such term includes re-refined oil.

**(39)** The term "re-refined oil" means used oil from which the physical and chemical contaminants acquired through previous use have been removed through a refining process.

**(40)** Except as otherwise provided in this paragraph, the term "medical waste" means any solid waste which is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals. Such term does not include any hazardous waste identified or listed under subchapter III of this chapter or any household waste as defined in regulations under subchapter III of this chapter.

**(41)** The term "mixed waste" means waste that contains both hazardous waste and source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).



## **GOLDSTON ENGINEERING, INC.**

5850 San Felipe, Suite 650  
Houston, TX 77057  
Phone (713) 977-8291 • Fax (713) 977-7466  
e-mail: [gei@goldstonengr.com](mailto:gei@goldstonengr.com)

May 1, 2008

A03055-00

Port Freeport  
200 West Second Street, 3<sup>rd</sup> Floor  
Freeport, TX 77541

**ATTN: DAVID KNUCKEY, DIRECTOR OF ENGINEERING**  
**RE: RESPONSE TO CONTRACT COMMENT**

Dear Sir,

On May 2, 2008 a Notice of Claim was issued by RLB Contracting, Inc. requesting that the Contract Price and schedule be adjusted for delays arising from an April 4, 2008 directive by Port Freeport to cease using pelletized lime. Following our review of the claim and background circumstances, we note the following:

1. RLB's handling of the pelletized lime created a hazardous environmental condition as a result of lime dust blowing over adjacent property (Freeport Launch). Complaints from this property owner brought this condition to Port Freeport's attention, and led to the April 4, 2008 directive to cease using the lime, thereby eliminating the hazard. Port Freeport's action was made necessary by Contractor's failure to comply with Article 4.06 D of the General Conditions, which requires Contractor to immediately stop all work in connection with a hazardous environmental condition.
2. Issues with lime dust creating an environmental hazard had been addressed in a teleconference on August 27, 2007 (see attached minutes). Based on the teleconference, RLB understood that use of pelletized lime would be restricted to favorable wind conditions, that use of water spray for dust control may be needed, and that caution was required regarding the speed of machinery spreading the lime.
3. During an April 9, 2008 meeting, RLB was requested to submit proposals for finishing the job without the use of lime. They were advised not to use pelletized lime, and to stockpile material too wet to compact until it could be worked. There was some discussion that lime slurry could be safely used, but this approach for eliminating the hazard was judged ineffective as a drying agent.
4. On April 29, 2008 RLB was advised that their proposals for finishing the work without the use of lime were not accepted, and they should continue to perform work in accordance with the contract. They could continue using lime provided they did not create a hazardous environmental condition in doing so.

Should you have any questions or require any additional information, please call our office at 713-977-8291.

Regards,

GOLDSTON ENGINEERING, INC.

Jerome F. Thibeaux, P.E.  
Senior Project Manager

19. *Engineer*--The individual or entity named as such in the Agreement or the replacement chosen by Owner.

20. *Field Order*--A written order issued by Engineer and approved by Owner which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

22. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

23. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

24. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

25. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

26. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*--The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

28. *Notice to Proceed*--A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

29. *Owner*--The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

30. *PCBs*--Polychlorinated biphenyls.

31. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil,

petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

32. *Progress Schedule*--A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.

33. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

34. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

35. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

36. *Related Entity*--An officer, director, partner, employee, agent, consultant, or subcontractor.

37. *Resident Project Representative*--The authorized representative of Owner or Engineer, as stipulated herein, who may be assigned to the Site or any part thereof.

38. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

39. *Schedule of Submittals*--A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

40. *Schedule of Values*--A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

41. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

Goldston Engineering, Inc.

**Meeting Notes:**

**Velasco Terminal Site Civil Project – Lime Issues Meeting**

**April 9, 2008**

**Attendees:**

**Joseph Scarborough-GEI**  
**Don Cheline, Bryan Roberts & Bob Lewis – PF**  
**Toby Marek & Randy Boyd- RLB**

**Meeting Notes:**

**I. Issues of the Pelletized Lime**

- Area 3 has about 10 test with 1-2 lifts
- Area 3 needs to be left open for letting material dry
- Contractor to submit proposals for deductions of bid items
- Proposal for deduction of the compacting requirement
- Proposal for deduction of the removal of the topsoil and seeding
- Proposal for deduction of the removal of the Lime material
- Contractor was directed to not use pelletized lime, since the dust was affecting the Freeport Launch
- Proposal to haul material into Area 3 and come back in 3 months and re work the material and de-mod and mob

**Action Items:**

- *Contractor to submit proposals for deletion of the various bid items described above*
- *GEI to respond with a recommendation letter to Port Freeport*

**Joseph Scarborough, April 23, 2008**

not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

#### 4.05 Reference Points

A. Engineer or Owner shall provide engineering surveys to establish reference points for construction which in Engineer's or Owner's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

#### 4.06 Hazardous Environmental Condition at Site

A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the Engineer in the preparation of the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered to Contractor written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.

F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of

CONSTRUCTION PROGRESS MEETING AGENDA  
PORT FREEPORT, TEXAS  
VELASCO TERMINAL SITE CIVIL PROJECT

Project: Velasco Terminal Site Civil Project – GEI PN: A03055-00; POF PN: 06-06

Date/Time: September 25, 2007, 2:00 p.m.

Location: Port Freeport Operations Building Conference Room, Freeport, Texas

Owner: Port Freeport, Texas  
P.O. Box 615  
Freeport, Texas 77542-0615  
Director of Engineering – David Knuckey, P.E.  
(979) 233-2667/4257

Engineer: Contractor:

Goldston Engineering, Inc. RLB Contracting, Inc  
5850 San Felipe, Suite 650 410 Broadway St  
Houston, Texas 77057 Port Lavaca, TX, 77979  
Project Manager: Wm Goldston, P.E. Project Manager: Randy L. Boyd  
(713) 977-8291 Ext. 187 (361)-552-2104

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#### I. Review Action Items from Progress Meeting No. 3

- Rotate fleeting office and add 2-inch waterline to barges near the fleeting office.
- Remove light poles from the discharge channel to the parking area.
- Make a recommendation concerning the organics found in the soil on the north side of the discharge channel.
- Work with Contractor to resolve lime dust nuisance during mixing.

#### II. Address Kirby Corp Concerns

- ~~TRUING FOUNDATION SCHEDULE ? DECEMBER~~  
• ~~DOCK BARGE PILING ? - None. KIRBY TO SUPPLY.~~  
•

#### III. Construction Progress

- Discuss issues with Manitowoc 4500. ~~UP & RUNNING.~~
- Shoreblock mats damaged/repaired. Manufacturer's representative to be on-site during installation. ~~AGREED TO MAKE REPAIRS. ENGINEER TO WORK WITH CONTRACTOR, NOT VENDOR~~
- Electrical design changes requested by subcontractor due to material availability approved. - ~~DUK~~
- Rotating fleeting office 90 degrees.
- Temporary Channel Crossing ~~Permit~~ submitted and in review. -
- Discuss soils report concerning recommendations for ~~recommendations~~ None

#### IV. Review Construction Schedule

- Change Order No. 3 extends contract completion date to December 2, 2007. *(12 days in Sept.)*
- RLB to submit a revised construction schedule with change orders incorporated. *By Oct. 5<sup>th</sup>)*
- Discuss result of considering 24 hour shifts. *LOOKING AT IT.*
- Discuss Maximum volume of haul per day less than 4,000 cy.

*LOGISTICALLY THERE IS NO PLACE TO PUT ADDITIONAL EQUIPMENT.*  
K:\PROJECTS\HOU\2003\PROJECTS\A03055-00 (H) PORT FREEPORT BERTH 714-CONSTRUCTION\Velasco Terminal Site Civil  
Project\Meetings\2007 09 25 Construction Progress Meeting Agenda.doc

## V. Application for Payment

- Pay request concerns about materials on-hand. Contractor notified of request for additional breakdown of shipping and handling costs.

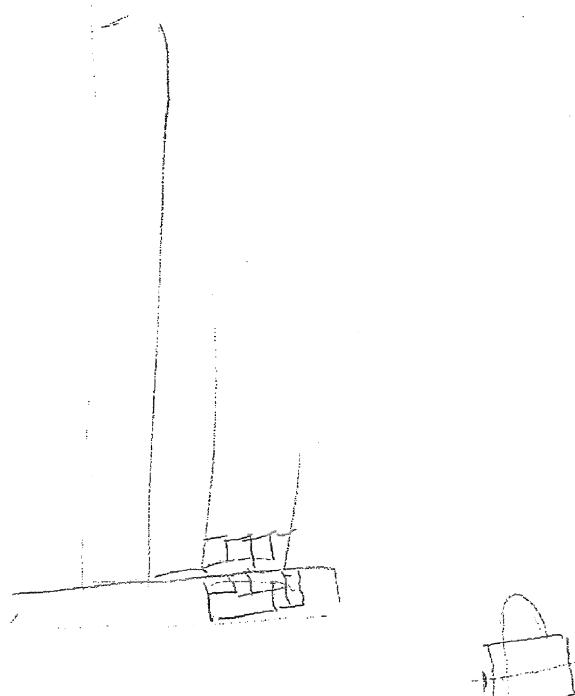
## VI. Construction Submittals

- No new construction submittals.

Oct. 23<sup>rd</sup> 2:00pm

9/11

9/12





BRAZOS RIVER HARBOR  
NAVIGATION DISTRICT

P.O. Box 615  
Freeport, Texas 77541  
(409) 233-2667 • (713) 757-1468

PURCHASE ORDER NO. 7198

VENDOR CODE

# purchase order

TO:

RLB Contracting  
P.O. Box 1739  
Port Lavaca, Texas 77043

SHIP TO:

Port Freeport  
200 West 2nd Street, 3rd Floor  
Freeport, Texas 77541  
Attn: Engineering Department

P.O. DATE	SHIP VIA	F.O.B.	TERMS
7/29/09			

QTY. REQ.	ITEM NO.	DESCRIPTION	UNIT COST	EXTENDED COST
		<p>Change Order No. 9 for the Velasco Terminal Site/Civil Project</p> <p><i>Velasco Terminal Site/Civil Project No. 06-06</i></p> <p><i>Original Purchase Order No. 6300</i></p> <p>Purchase Order Amount: (Not to Exceed)</p> <p><i>Approved by Board Action July 23, 2009</i></p>		\$89,838.00

CP-Ports Velasco Terminal  
1813-00-0701

2003

*R. H. Kelly*  
Ordered by  
*M. J. (Amber)*  
Authorized by  
*B*

**Article 4 - CONTRACT PRICE:**

**OWNER** shall pay **CONTRACTOR** for completion of the Work in accordance with the Contract Documents in current funds as follows:

**TOTAL PRICE \$6,938,000.00**

Six Million Nine Hundred Thirty Eight Thousand Dollars and No Cents (WORDS)

The above total price includes the cost of the unit rate items listed below. In the unit rates, the Bidder shall provide an all-in rate for adjusting the price of a work item should the quantity be adjusted as a result of a change in the scope of work, or the actual quantity differ from the quantity stipulated as a basis of the bid. If the Bidder notes any variances from the estimated quantities, he shall use the stipulated estimated quantities for his Base Bid and shall advise the Owner of such variances.

**UNIT RATES**

ITEM	DESCRIPTION	UM	QUAN-TITY	UNIT PRICE	TOTAL PRICE
1	Excavation, transport, placement and compaction of fill material in designated areas on site (unit price is based on excavation material). *	CY	365,000	\$ 7.00	\$2,555,000.00
2	Removal, stockpiling and replacement of the top 6-inches of topsoil from backlands areas on the site.	Acres	73	\$3,000.00	\$219,000
3	Permanent hydromulching of erosion control grasses in backlands area.	Acres	73	\$2,000.00	\$146,000
4	Temporary hydromulching of erosion control grasses in backlands area.	Acres	30	\$1,500.00	\$45,000
5	Placement of 8" ACB erosion protection revetment in barge fleeting area.	SF	65,280	\$13.50	\$881,280
6	Pelletized Quicklime drying agent (material only)	Ton	15,000	\$105.00	\$1,575,000.00
7	Mixing of drying agent in soil to be treated	CY	110,000	\$2.00	\$220,000.00

\* Material excavated and stockpiled, but not placed and compacted shall valued at 50% of the unit price for progressive payment purposes.

## Don Cheline

**From:** David Knuckey  
**Sent:** Wednesday, April 23, 2008 2:11 PM  
**To:** William.Goldston@CH2M.com  
**Cc:** Joseph.Scarborough@CH2M.com; Jerry.Thibeaux@CH2M.com; Don Cheline; Linda Matcheski  
**Subject:** RE: RLB Request

William,

I just sat down with Don and went over the seven items submitted to the Port by RLB Contracting on April 10th. First off, I wasn't aware we had this many issues out there pending. Some of these are fairly straightforward and should have been responded to and put to bed by now. The other ones are more complicated and will need more time.

This is backwards from the General Conditions, but here are my comments/suggestions anyway!

Item 1 - Addition of a 2" water line and meter for use by Kirby Marine (\$8,452.50 increase). I will check with Phyllis but I believe our response will be if Kirby wants the water line they can pay for it. *Reject.*

Item 2 - Deletion of 18" RCP and associated slope paving (\$7,256.00 credit). This equates to an installation credit of \$106.25/LF for the RCP. The proposal does not address the issue of ownership of the 48 LF of 18" RCP nor of the installation time. I'm assuming the Port will take possession of the RCP and the Contractor will NOT give us back 3 calendar days. Subject to clarification of these points, suggest recommending this item be approved.

Item 3 - Deletion of 108 LF of 30" RCP and associated slope paving (\$15,850.00 credit). This equates to an installation credit of \$78.70/LF for the RCP which is slightly less than what is being offered in Item 3 above. The proposal does not address the issue of ownership of the 108 LF of 30" RCP nor of the installation time. I'm assuming the Port will take possession of the RCP and the Contractor will NOT give us back 5 calendar days. Subject to clarification of these points, suggest recommending this item be approved.

Item 4 - Deletion of placement of crushed limestone base on Dock Access Road (\$30,800.00 credit). I calculate the rock tonnage as,

$(14''/12) \times (41') \times (891') / 27 \times 1.8 \text{ tons/CY} = 2,800 \text{ tons, NOT 1,800 tons.}$  *Joseph came up with \$67,000 credit*

The labor credit is extremely low. The Contractor does not include a water truck nor layout and control. Based on recent contracts, the labor cost per ton of limestone has averaged \$4.25/ton. Credit should be more in the range of,

$(2,800 \text{ tons} @ \$15.00/\text{ton}) + (2,800 \text{ tons} @ \$4.25/\text{ton}) = \$53,900.00$

In my opinion, those are the easy ones.

Now for the more interesting ones!

Item 5 - Deletion of lime and air drying of 75,000 CY (\$17,224.35 credit and 105 day increase in contract time). I apologize but this does not rise to the level of a comment. Please instruct the Contractor to comply with the Contract and if that requires the use of chemical lime as a drying agent the Owner agrees to pay for it.

Item 6 - Deletion of replacement of 70 acres of topsoil (\$27,000.00 credit). Technical Specifications, Section 02230 - Site Clearing does not address unit prices. The credit equates to \$386.00 per acre. This tells me the Contractor wants \$2,614.00 per acre to remove and stockpile the topsoil (\$3,000.00 - 386.00 = \$2,614.00). If the Contractor were to offer a 70-30 split (70% to remove and stockpile and 30% to place and spread) (\$2,100.00 - \$900.00) we could consider a credit. I suggest we start by offering him a ~~60-40~~ split and see where this goes

*Work on a per Acre price.*

*\$0.50*

4/23/2008

*6*

Item 7 - Deletion of 70 acres of hydromulch (\$68,250.00 credit). This equates to \$975.00 per acre. The Contractor provided two unit prices for hydromulching in his bid; \$2,000.00 per acre for "permanent" and \$1,500.00 for temporary" hydromulching. Suggest offering the Contractor the lower of the two figures (\$1,500.00 per acre) less 20% for overhead and profit, even though the General Conditions, Article 12.01.C.2 (a) or (b) limit the Contractor's fee for overhead and profit to 15%.

Please review my comments and then let's talk.

David M. Knuckey, P.E.  
Director of Engineering & Construction  
Port Freeport  
office: 979-233-2667, extension 4257  
fax: 979-233-4696  
mobile: 979-239-8003

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**From:** William.Goldston@CH2M.com [mailto:William.Goldston@CH2M.com]  
**Sent:** Wednesday, April 23, 2008 10:19 AM  
**To:** David Knuckey  
**Cc:** Joseph.Scarborough@CH2M.com; Jerry.Thibaux@CH2M.com  
**Subject:** RLB Request

David:  
I'll be at your office tomorrow for the Capital Planning Mtg and the Commission mtg. Do you have time to discuss the RLB proposal or do you want to wait?

**William Goldston, P.E.**  
President  
**Goldston Engineering, Inc.**  
Houston Phone: 713-977-8291, ext 187  
Corpus Phone: 361-888-8100, ext 187  
Cell: 713-828-5701  
e-mail: [w.goldston@goldstonengr.com](mailto:w.goldston@goldstonengr.com)  
Web site: [www.goldstonengr.com](http://www.goldstonengr.com)

## 42 U.S.C.A. § 6903

## United States Code Annotated Currentness

Title 42. The Public Health and Welfare

Chapter 82. Solid Waste Disposal (Refs &amp; Annos)

Subchapter I. General Provisions

**§ 6903. Definitions**

As used in this chapter:

**(1)** The term "Administrator" means the Administrator of the Environmental Protection Agency.

**(2)** The term "construction," with respect to any project of construction under this chapter, means (A) the erection or building of new structures and acquisition of lands or interests therein, or the acquisition, replacement, expansion, remodeling, alteration, modernization, or extension of existing structures, and (B) the acquisition and installation of initial equipment of, or required in connection with, new or newly acquired structures or the expanded, remodeled, altered, modernized or extended part of existing structures (including trucks and other motor vehicles, and tractors, cranes, and other machinery) necessary for the proper utilization and operation of the facility after completion of the project; and includes preliminary planning to determine the economic and engineering feasibility and the public health and safety aspects of the project, the engineering, architectural, legal, fiscal, and economic investigations and studies, and any surveys, designs, plans, working drawings, specifications, and other action necessary for the carrying out of the project, and (C) the inspection and supervision of the process of carrying out the project to completion.

**(2A)** The term "demonstration" means the initial exhibition of a new technology process or practice or a significantly new combination or use of technologies, processes or practices, subsequent to the development stage, for the purpose of proving technological feasibility and cost effectiveness.

**(3)** The term "disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

**(4)** The term "Federal agency" means any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation, and the Government Printing Office.

**(5)** The term "hazardous waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may--

**(A)** cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

**(B)** pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

**(6)** The term "hazardous waste generation" means the act or process of producing hazardous waste.

**(7)** The term "hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

**(8)** For purposes of Federal financial assistance (other than rural communities assistance), the term "implementation" does not include the acquisition, leasing, construction, or modification of facilities or

equipment or the acquisition, leasing, or improvement of land.

**(9)** The term "intermunicipal agency" means an agency established by two or more municipalities with responsibility for planning or administration of solid waste.

**(10)** The term "interstate agency" means an agency of two or more municipalities in different States, or an agency established by two or more States, with authority to provide for the management of solid wastes and serving two or more municipalities located in different States.

**(11)** The term "long-term contract" means, when used in relation to solid waste supply, a contract of sufficient duration to assure the viability of a resource recovery facility (to the extent that such viability depends upon solid waste supply).

**(12)** The term "manifest" means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

**(13)** The term "municipality" (A) means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law, with responsibility for the planning or administration of solid waste management, or an Indian tribe or authorized tribal organization or Alaska Native village or organization, and (B) includes any rural community or unincorporated town or village or any other public entity for which an application for assistance is made by a State or political subdivision thereof.

**(14)** The term "open dump" means any facility or site where solid waste is disposed of which is not a sanitary landfill which meets the criteria promulgated under section 6944 of this title and which is not a facility for disposal of hazardous waste.

**(15)** The term "person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.

**(16)** The term "procurement item" means any device, good, substance, material, product, or other item whether real or personal property which is the subject of any purchase, barter, or other exchange made to procure such item.

**(17)** The term "procuring agency" means any Federal agency, or any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract.

**(18)** The term "recoverable" refers to the capability and likelihood of being recovered from solid waste for a commercial or industrial use.

**(19)** The term "recovered material" means waste material and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process.

**(20)** The term "recovered resources" means material or energy recovered from solid waste.

**(21)** The term "resource conservation" means reduction of the amounts of solid waste that are generated, reduction of overall resource consumption, and utilization of recovered resources.

**(22)** The term "resource recovery" means the recovery of material or energy from solid waste.

**(23)** The term "resource recovery system" means a solid waste management system which provides for collection, separation, recycling, and recovery of solid wastes, including disposal of nonrecoverable waste residues.

**(24)** The term "resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

**(25)** The term "regional authority" means the authority established or designated under section 6946 of this title.

**(26)** The term "sanitary landfill" means a facility for the disposal of solid waste which meets the criteria published under section 6944 of this title.

**(26A)** The term "sludge" means any solid, semisolid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effects.

**(27)** The term "solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 1342 of Title 33, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923) [42 U.S.C.A. § 2011 et seq.].

**(28)** The term "solid waste management" means the systematic administration of activities which provide for the collection, source separation, storage, transportation, transfer, processing, treatment, and disposal of solid waste.

**(29)** The term "solid waste management facility" includes--

**(A)** any resource recovery system or component thereof,

**(B)** any system, program, or facility for resource conservation, and

**(C)** any facility for the collection, source separation, storage, transportation, transfer, processing, treatment or disposal of solid wastes, including hazardous wastes, whether such facility is associated with facilities generating such wastes or otherwise.

**(30)** The terms "solid waste planning", "solid waste management", and "comprehensive planning" include planning or management respecting resource recovery and resource conservation.

**(31)** The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

**(32)** The term "State authority" means the agency established or designated under section 6947 of this title.

**(33)** The term "storage", when used in connection with hazardous waste, means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste.

**(34)** The term "treatment", when used in connection with hazardous waste, means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

**(35)** The term "virgin material" means a raw material, including previously unused copper, aluminum, lead, zinc, iron, or other metal or metal ore, any undeveloped resource that is, or with new technology will become, a source of raw materials.

**(36)** The term "used oil" means any oil which has been--

**(A)** refined from crude oil,

**(B)** used, and

**(C)** as a result of such use, contaminated by physical or chemical impurities.

**(37)** The term "recycled oil" means any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes oil which is re-refined, reclaimed, burned, or reprocessed.

**(38)** The term "lubricating oil" means the fraction of crude oil which is sold for purposes of reducing friction in any industrial or mechanical device. Such term includes re-refined oil.

**(39)** The term "re-refined oil" means used oil from which the physical and chemical contaminants acquired through previous use have been removed through a refining process.

**(40)** Except as otherwise provided in this paragraph, the term "medical waste" means any solid waste which is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals. Such term does not include any hazardous waste identified or listed under subchapter III of this chapter or any household waste as defined in regulations under subchapter III of this chapter.

**(41)** The term "mixed waste" means waste that contains both hazardous waste and source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

## CREDIT(S)

(Pub.L. 89-272, Title II, § 1004, as added Pub.L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2798, and amended Pub.L. 95-609, § 7(b), Nov. 8, 1978, 92 Stat. 3081; Pub.L. 96-463, § 3, Oct. 15, 1980, 94 Stat. 2055; Pub.L. 96-482, § 2, Oct. 21, 1980, 94 Stat. 2334; Pub.L. 100-582, § 3, Nov. 1, 1988, 102 Stat. 2958; Pub.L. 102-386, Title I, §§ 103, 105(b), Oct. 6, 1992, 106 Stat. 1507, 1512.)

## HISTORICAL AND STATUTORY NOTES

### Revision Notes and Legislative Reports

1976 Acts. House Report No. 94-1491(Parts I and II), see 1976 U.S. Code Cong. and Adm. News, p. 6238.

1978 Acts. House Report No. 95-1171, see 1978 U.S. Code Cong. and Adm. News, p. 7569.

1980 Acts. House Report No. 96-1415, see 1980 U.S. Code Cong. and Adm. News, p. 4354.

Senate Report No. 96-172 and House Conference Report No. 96-1444, see 1980 U.S. Code Cong. and Adm. News, p. 5019.

1988 Acts. Statement by President, see 1988 U.S. Code Cong. and Adm. News, p. 3935-1.

1992 Acts. House Report No. 102-111, House Conference Report No. 102-886, and Statement by President, see 1992 U.S. Code Cong. and Adm. News, p. 1287.

### References in Text

The Atomic Energy Act of 1954, as amended, referred to in pars. (27) and (41), is Act Aug. 30, 1954, c. 1073, § 1, 68 Stat. 919, as amended, which is classified principally to chapter 23 (section 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

#### Amendments

1992 Amendments. Par. (15). Pub.L. 102-386, § 103, inserted "and shall include each department, agency, and instrumentality of the United States" after "interstate body".

Par. (41). Pub.L. 102-386, § 105(b), added par. (41).

1988 Amendments. Par. (40). Pub.L. 100-582, § 3, added par. (40).

1980 Amendments. Par. (14). Pub.L. 96-482, § 2(a), defined "open dump" to include a facility; substituted requirement that disposal facility or site not be a sanitary landfill meeting section 6944 of this title criteria for prior requirement that disposal site not be a sanitary landfill within meaning of section 6944 of this title; and required that the disposal facility or site not be a facility for disposal of hazardous waste.

Par. (19). Pub.L. 96-482, § 2(b), defined "recovered material" to cover byproducts; substituted provision for recovery or diversion of waste material and byproducts from solid waste for prior provision for collection or recovery of material from solid waste; and excluded materials and byproducts generated from and commonly reused within an original manufacturing process.

Pars. (36) to (39). Pub.L. 96-463, § 3, added pars. (36) to (39).

1978 Amendments. Par. (8). Pub.L. 95-609, § 7(b)(1), struck out provision stating that employees' salaries due pursuant to subchapter IV of this chapter would not be included after December 31, 1979.

Par. (10). Pub.L. 95-609, § 7(b)(2), substituted "management" for "disposal".

Par. (29). Pub.L. 95-609, § 7(b)(3), substituted "the collection, source separation, storage, transportation, transfer, processing, treatment or disposal" for "the treatment" in subpar. (C).

#### Transfer of Functions

Enforcement functions of Administrator or other official of the Environmental Protection Agency related to compliance with resource conservation and recovery permits used under this chapter with respect to preconstruction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, eff. July 1, 1979, §§ 102(a), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, set out in Appendix 1 to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub.L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade.

#### Prior Provisions

Provisions similar to this section were contained in section 3252 of this title, prior to the complete revision of the Solid Waste Disposal Act by Pub.L. 94-580.

#### CROSS REFERENCES

"Disposal" and "treatment" having same meaning under this section for purposes of hazardous substances releases, liability, compensation provisions, see 42 USCA § 9601.

"Hazardous waste" having same meaning under this section for purposes of--  
Defense facilities contracts, see 10 USCA § 2708.

Hazardous substances releases, liability, compensation provisions, see 42 USCA § 9601.

"Solid waste" having same meaning under this section for purposes of--  
Commercial demonstration facility for conversion of solid waste, see 42 USCA § 5919.

Dumping within pipeline right-of-way, see 49 USCA § 60128.

Indian land open dump cleanup, see 25 USCA § 3902.

"Municipal or commercial waste" definition relating to shore protection, see 33 USCA § 2601.

"Nonfood product" definition relating to sanitary food transportation, see 49 USCA § 5702.

Tax on chemicals, see 26 USCA § 4662.

Transportation of hazardous waste at sea, see 46 USCA § 55105.

"Used oil" and "recycled oil" having same meaning under this section for purposes of hazardous substances releases, liability, compensation provisions, see 42 USCA § 9614.

#### LAW REVIEW COMMENTARIES

Commanding respect: Criminal sanctions for environmental crimes. Eva M. Fromm, 21 St. Mary's L.J. 821 (1990).

Contractors as unsuspecting responsible parties under Superfund. J. Randle Schick, 8 CBA Rec. 16 (Feb. 1994).

From elephants to mice: The development of EBMUD's program to control small source wastewater discharges. Raoul Stewardson, 20 Ecology L.Q. 441 (1993).

Hazardous wastes in New Jersey: An overview. Anne F. Morris, 38 Rutgers L.Rev. 623 (1986).

How to take recycling one step forward, two steps back: The EPA's proposal to revise the definition of solid waste under RCRA. Comment, 18 Tul. Envtl. L.J. 385 (2005).

Interstate waste: A key issue in resolving the national hazardous waste capacity crisis. B.J. Wynne, III and Terri Hamby, 32 S.Tex.L.Rev. 601 (1991).

Nuisance law and petroleum underground storage tank contamination: Plugging the hole in the statutes. James B. Brown and Glen C. Hansen, 21 Ecology L.Q. 643 (1994).

Open field burning of grass residue: An injury without a remedy? Note, 32 Ecology L.Q. 603 (2005).

The 1984 amendments to the Resource Conservation and Recovery Act. Arthur J. Harrington, 58 Wis.B.Bull. 17 (June 1985).

Trash troubles: Issues and options in managing municipal solid waste. 33 Hous.L.Rev. 499 (1996).

Used oil in the United States: Environmental impact, regulation, and management. Elizabeth A. Beiring, 41 Buff.L.Rev. 157 (1993).

Warrior and the Druid--the DOD and environmental law. Michael Donnelly and James G. Van Ness, 33 Fed.B.News 37 (1986).

#### RESEARCH REFERENCES

##### ALR Library

12 ALR, Fed. 2nd Series 161, Innocent Owner Status Under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

198 ALR, Fed. 147, Preemption Issues Under Atomic Energy Act of 1954, §§ 1 et Seq., 42 U.S.C.A. §§ 2011 et Seq.

148 ALR, Fed. 203, Equitable Considerations in Allocating Response Costs to Owner or Occupant of Previously Contaminated Facility in Action Pursuant to Sec.113 (F) of Comprehensive Environmental Response, Compensation, and Liability Act...

139 ALR, Fed. 123, Indemnification or Release Agreement as Covering Liability Under § 107(A) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C.A. § 9607(a)).

135 ALR, Fed. 197, What Constitutes "Hazardous Waste" Subject to Regulation Under Resource Conservation and Recovery Act (42 U.S.C.A. §§ 6901 et seq.).

136 ALR, Fed. 117, What Constitutes "Disposal" for Purposes of Owner or Operator Liability Under § 107(A)(2) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)...

132 ALR, Fed. 77, Arranger Liability of Nongenerators Pursuant to § 107(A)(3) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C.A. § 9607(A)(3)).

133 ALR, Fed. 293, Liability of Local Government Under § 107(A) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C.A. § 9607(a)).

125 ALR, Fed. 315, Arranger Liability of Sellers Pursuant to § 107(A)(3) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C.A. § 9607(A)(3)).

127 ALR, Fed. 511, Liability of Federal Government Under § 107(A) of Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C.A. § 9607(a)).

118 ALR, Fed. 293, Determination Whether Substance is "Hazardous Substance" Within Meaning of § 101(14) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)...

120 ALR, Fed. 1, Establishing "Release or Threatened Release" of Hazardous Substance from Facility for Purposes of Liability Pursuant to § 107 of Comprehensive Environmental Response, Compensation, and Liability Act...

112 ALR, Fed. 49, Transporter Liability Under § 107(A)(4) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C.A. § 9607(A)(4)).

115 ALR, Fed. 491, Liability Under § 7003 of Resource Conservation and Recovery Act (42 U.S.C.A. § 6973) Pertaining to Imminent Hazards from Solid or Hazardous Waste.

105 ALR, Fed. 800, Right to Maintain Action Based on Violation of § 7003 of Resource Conservation and Recovery Act (42 U.S.C.A. § 6973) Pertaining to Imminent Hazards from Solid or Hazardous Waste.

91 ALR, Fed. 436, Right to Maintain Citizen Suit Under § 7002 of Resource Conservation and Recovery Act (42 U.S.C.A. § 6972).

71 ALR, Fed. 181, Relief Available in Citizen's Suit Under 42 U.S.C.A. § 6972 for Violation of Federal Requirements Relating to Solid or Hazardous Waste.

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40 Am. Jur. Proof of Facts 3d 457, Wrongful Handling or Disposal of Solid or Hazardous Waste.

41 Am. Jur. Proof of Facts 3d 391, Common-Law Action for Noise Nuisance on Neighboring Land.

78 Am. Jur. Proof of Facts 3d 107, Liability for Petroleum Contamination from Leaking Underground Storage Tank.

52 Am. Jur. Trials 473, Toxic Experts.

57 Am. Jur. Trials 395, Handling Toxic Tort Litigation.

Am. Jur. 2d Federal Taxation P 15353, Qualified Energy Resources Defined for the Electricity Production Credit.

Am. Jur. 2d Pollution Control § 1135, "Solid Waste" Defined.

Am. Jur. 2d Pollution Control § 1138, Solid Waste Management Plans.

Am. Jur. 2d Pollution Control § 1151, Generally; Definition of "Hazardous Waste".

## Forms

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Am. Jur. Pl. & Pr. Forms Pollution Control § 91, Complaint in Federal District Court--Citizen Suit to Compel Compliance With FwPCA--Discharge of Pollutants from Chicken Processing Plant--Counts for Nuisance, Trespass, Negligence, And...

Am. Jur. Pl. & Pr. Forms Pollution Control § 93, Complaint in Federal District Court--Citizen Suit for Declaratory and Injunctive Relief and Civil Penalties--Under FwPCA, RCRA and State Unfair Business Practices Law--Landfill Operating...

Am. Jur. Pl. & Pr. Forms Pollution Control § 121, Introductory Comments.

Am. Jur. Pl. & Pr. Forms Pollution Control § 128, Interrogatories in Federal Court--In Action Involving Disposal of Hazardous Waste--Plaintiff to Defendant.

## Treatises and Practice Aids

Mertens: Law of Federal Income Taxation § 8:58, Solid Waste Disposal Facilities.

Mertens: Law of Federal Income Taxation § 8:59, Qualified Hazardous Waste Facilities.

Mertens: Law of Federal Income Taxation § 32A:30, Electricity Generated from Renewable Resources.

West's Federal Administrative Practice § 5266, The Resource Conservation and Recovery Act.

## NOTES OF DECISIONS

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## 1. Construction with other laws

Substance need not to be "hazardous waste" within meaning of Solid Waste Disposal Act (SWDA) in order for disposal or treatment liability under CERCLA to attach; because SWDA and CERCLA have

different purposes, they covered different materials. State of Cal. on Behalf of State Dept. of Toxic Substances v. Summer Del Caribe, Inc., N.D.Cal.1993, 821 F.Supp. 574, 125 A.L.R. Fed. 729. Environmental Law 440

Fact that waste is not hazardous under Resource Conservation and Recovery Act does not prevent it from being hazardous under CERCLA. State of Ariz. v. Motorola, Inc., D.Ariz.1991, 774 F.Supp. 566. Environmental Law 440

## 2. Disposal

Property owner and operators of scrap metal business on the property violated prohibition in Resource Conservation Recovery Act (RCRA) on open dumping; owner and operators "disposed of" solid waste by placing scrap metal and other materials throughout their property, and facility was neither a sanitary landfill nor a facility for the disposal of hazardous waste. Parker v. Scrap Metal Processors, Inc., C.A.11 (Ga.) 2004, 386 F.3d 993, rehearing and rehearing en banc denied 125 Fed.Appx. 979, 2004 WL 2806000. Environmental Law 372

Environmental Protection Agency (EPA) rule purporting to define as solid waste subject to the Resource Conservation and Recovery Act (RCRA) materials that were generated and reclaimed within the primary mineral processing industry, if those materials were not reused immediately but were stored for any length of time, was inconsistent with RCRA, because materials destined for reuse as part of a continuous industrial process were not "discarded" within meaning of RCRA, since they were not disposed of, abandoned, or thrown away. Association of Battery Recyclers, Inc. v. U.S. E.P.A., C.A.D.C.2000, 208 F.3d 1047, 341 U.S.App.D.C. 78. Environmental Law 372; Environmental Law 354

Defendant did not admit discharge of hazardous waste into environment for sentence enhancement purposes by pleading guilty to illegal disposal of hazardous waste; Solid Waste Disposal Act under which defendant was convicted defines "disposal" as placing of hazardous waste so that such waste "may enter the environment" and, thus, defendant's admission was that he disposed of hazardous waste in such fashion that it could enter environment. U.S. v. Ferrin, C.A.9 (Cal.) 1993, 994 F.2d 658, 138 A.L.R. Fed. 763. Sentencing And Punishment 968

"Disposal," within meaning of CERCLA, encompassed the dispersal of contaminated soil during excavation and grading of development site so as to render excavator liable for contribution to owner of property for cost of removing contaminated soil from property. Kaiser Aluminum & Chemical Corp. v. Catellus Development Corp., C.A.9 (Cal.) 1992, 976 F.2d 1338. Environmental Law 441

Since the term "disposal" is used throughout this chapter, its definition under this section must necessarily be broad and general to encompass both routine regulatory and the less common emergency situations. U.S. v. Waste Industries, Inc., C.A.4 (N.C.) 1984, 734 F.2d 159, on remand.

Sporting activities that resulted in lead shot or lead pellets being deposited at site used as trap and skeet shooting range, through productive use of lead-containing ammunition, did not constitute "disposal" of lead within meaning of CERCLA. Otay Land Co. v. U.E. Ltd., L.P., S.D.Cal.2006, 440 F.Supp.2d 1152, vacated 2009 WL 2179739. Environmental Law 441

Alleged post-purchase passive migration of hazardous wastes, through groundwater or otherwise, did not constitute "disposal," and thus purchaser of property many years after dumping of hazardous substances had ceased could not be held liable under Resource Conservation Recovery Act (RCRA). Delaney v. Town of Carmel, S.D.N.Y.1999, 55 F.Supp.2d 237. Environmental Law 430

Leaching of hazardous waste into the groundwater from contaminated soil constituted continuing "disposal" of hazardous waste, under RCRA and Colorado regulations, even if contamination of soil was not ongoing. U.S. v. Power Engineering Co., D.Colo.1998, 10 F.Supp.2d 1145, affirmed 191 F.3d 1224, certiorari denied 120 S.Ct. 1718, 529 U.S. 1086, 146 L.Ed.2d 640. Environmental Law 430

Term "dispose of," as used in federal electrical contract and letter from contractor's vice-president to

subcontractor, could not be defined in CERCLA action using the Resource Conservation and Recovery Act (RCRA) definition of "disposal"; if it were, then government would have required electrical contractor, by contract, to violate CERCLA by discharging hazardous waste onto land, an irrational result. U.S. v. North Landing Line Const. Co., E.D.Va.1998, 3 F.Supp.2d 694. Environmental Law 441

Under Resource Conservation and Recovery Act (RCRA) provision for citizens suits, "disposal" includes discharge of solid or hazardous waste into any waters, including groundwaters, and does not require that polluted waters be navigable waters. Pape v. Lake States Wood Preserving, Inc., W.D.Mich.1995, 948 F.Supp. 697, affirmed 98 F.3d 1342. Environmental Law 430; Environmental Law 357

Pursuant to indemnity provision in connection with corporate asset purchase, providing that buyer assumed seller's liability for "the discharge at or by the [plant] of industrial products, waste or other materials into the air, streams, lakes, rivers or otherwise," buyer assumed seller's CERCLA liability based on benzene contamination of soil at plant, even though transaction pre-dated CERCLA, and despite buyer's claim that "discharge into" connoted only operational discharges from plant into air or body of water beyond plant's boundaries; drafters were charged with knowledge of statutory definitions of "discharge" and, interchangeably, "disposal," in Clean Water Act and Resource Conservation and Recovery Act (RCRA), which were directly known to parties, it was reasonable to conclude that drafters relied on RCRA's definition of "disposal," given provision's use of term "waste," but not "pollutants," and under court's construction of provision read with "at," and one of court's readings with term "by," events occurring within plant's boundaries were covered. City of Toledo v. Beazer Materials and Services, Inc., N.D.Ohio 1995, 912 F.Supp. 1051, reversed 103 F.3d 128. Indemnity 33(6)

Passive leaching or migration of hazardous substances constitutes "disposal" within the meaning of CERCLA provision imposing liability upon those who dispose of hazardous substances. Stanley Works v. Snydergeneral Corp., E.D.Cal.1990, 781 F.Supp. 659. Environmental Law 441

Former gas manufacturing facility operator's deposit of hazardous substances into subsurface receptacles constituted "disposal" within meaning of CERCLA, although substances would not have been released but for subsequent construction activities by purchaser of property. Westwood Pharmaceuticals, Inc. v. National Fuel Gas Distribution Corp., W.D.N.Y.1990, 737 F.Supp. 1272, reconsideration denied 767 F.Supp. 456, affirmed 964 F.2d 85. Environmental Law 441

"Disposal" within meaning of statute, which establishes liability for response costs if person owned or operated facility at time of disposal of hazardous substance, did not mean general movement and migration of hazardous substance on property at time of ownership; rather, statute permits action only against prior owners or operators who owned site at time that hazardous substances were introduced into environment. Ecodyne Corp. v. Shah, N.D.Cal.1989, 718 F.Supp. 1454. Environmental Law 441

An analysis of the term "disposal" calls for an examination of its everyday meaning, the purpose of the legislation of which it is a part and the context and structure of the legislation. Prudential Ins. Co. of America v. U.S. Gypsum, D.N.J.1989, 711 F.Supp. 1244.

Mere ownership of hazardous waste site during period of time during which migration or leaching may have taken place, without any active disposal activities, is not "disposal" subjecting owner to liability under CERCLA for contamination of site; rather, disposal requires active conduct, and only owners or operators who introduce hazardous substances into the environment may be held liable. In re Diamond Reo Trucks, Inc., Bkrtcy.W.D.Mich.1990, 115 B.R. 559. Environmental Law 441

### 3. Hazardous waste--Generally

Definition of "hazardous waste" in Resource Conservation Recovery Act (RCRA) includes not only those solid wastes that do pose hazards to human health or environment, but also those that "may" do so, and thus does not unambiguously preclude EPA from regulating mixtures and derivatives of listed hazardous wastes until such time as they may be shown to be non-hazardous. American

Chemistry Council v. E.P.A., C.A.D.C.2003, 337 F.3d 1060, 358 U.S.App.D.C. 18. Environmental Law  
427

Defendant's conviction for violating Resource Conservation and Recovery Act by violating Environmental Protection Agency's invalid "mixture rule" could not be upheld by relying upon Arkansas mixture rule in place of vacated federal rule; defendant was convicted of federal statute defined by federal law, and federal law did not incorporate state law definitions of hazardous waste. U.S. v. Goodner Bros. Aircraft, Inc., C.A.8 (Ark.) 1992, 966 F.2d 380, certiorari denied 113 S.Ct. 967, 506 U.S. 1049, 122 L.Ed.2d 123. Environmental Law 747

Prior owner's activities on site established that it spread tar-like material laden with hazardous substances over substantial part of 2.5 acres of 15-acre site and, therefore, entire 2.5 acres constituted one "tract" of facility and, thus, what allegedly occurred during construction, i.e., spreading out hazardous substances and mixing them with surrounding dirt, increasing volume of material which had to be removed, and contaminating part of site which had been undisturbed woods, was not "disposal" under CERCLA and construction activities imposed no arranger liability on contractor. Redwing Carriers, Inc. v. Saraland Apartments, Ltd., S.D.Ala.1995, 875 F.Supp. 1545, affirmed in part, reversed in part 94 F.3d 1489, 140 A.L.R. Fed. 691. Environmental Law 441

#### 4. ---- Asbestos, hazardous waste

Asbestos is "hazardous waste" within meaning of Resource Conservation and Recovery Act (RCRA), even though asbestos is not listed as hazardous waste in administrative regulations promulgated pursuant to RCRA; term "hazardous waste" as defined by statute embraces waste asbestos as hazardous waste, and asbestos causes or significantly contributes to an increase in mortality and increase in serious irreversible or incapacitating reversible, illness. Metal Trades, Inc. v. U.S., D.S.C.1992, 810 F.Supp. 689. Environmental Law 440

#### 5. ---- Leachate, hazardous waste

Leachate from landfill at which emission control dust had been buried was "hazardous waste" subject to regulation under the Resource Conservation and Recovery Act and New York Environmental Conservation Law regardless of whether it was derived from disposal of a listed hazardous waste, where it exhibited a characteristic of a hazardous waste. Al Tech Specialty Steel Corp. v. U.S. E.P.A., C.A.2 (N.Y.) 1988, 846 F.2d 158. Environmental Law 427

A "hazardous waste" does not lose that description because it is mixed with some other waste or is found in leachate, but, rather, leachate from hazardous waste is important target of this section and thus regulatory definition of "discarded" waste, in turn including materials "disposed of," points directly to contaminated leachate. O'Leary v. Moyer's Landfill, Inc., E.D.Pa.1981, 523 F.Supp. 642. Environmental Law 427

#### 6. ---- Lead, hazardous waste

Lead components reclaimed from spent batteries were "hazardous waste," not "raw materials," and, thus, because Environmental Protection Agency (EPA) has defined "discarded material" (which is hazardous waste) to include "recycled material," components were subject to provisions of Resource Conservation and Recovery Act (RCRA); despite smelter's argument that it had never "discarded" components, somebody had discarded battery in which those components were found, and EPA reasonably assumed that Congress meant "discarded once." U.S. v. ILCO, Inc., C.A.11 (Ala.) 1993, 996 F.2d 1126. Environmental Law 427

#### 7. ---- Oil and gas, hazardous waste

Fact that Environmental Protection Agency (EPA) found that gasoline-powered engine oil exhibited toxicity characteristic did not require EPA to list it as hazardous waste. Natural Resources Defense Council, Inc. v. U.S. E.P.A., C.A.D.C.1994, 25 F.3d 1063, 306 U.S.App.D.C. 357. Environmental Law  
427

Natural gas condensate is not a hazardous waste subject to Resource Conservation and Recovery Act (RCRA) regulation when it is burned for energy recovery, which includes burning it as automotive fuel. U.S. v. Self, C.A.10 (Utah) 1993, 2 F.3d 1071, 135 A.L.R. Fed. 695, appeal from denial of post-conviction relief dismissed 23 Fed.Appx. 916, 2001 WL 1515838. Environmental Law 427

Petroleum is not "hazardous waste" within meaning of Resource Conservation and Recovery Act (RCRA), but is "solid waste" and, thus, exception to statutory notice requirement, allowing citizen suits to be brought immediately when claim involves hazardous waste, is inapplicable where environmental contamination is caused by petroleum. PaineWebber Income Properties Three Ltd. Partnership By and Through Third Income Properties, Inc. v. Mobil Oil Corp., M.D.Fla.1995, 902 F.Supp. 1514. Environmental Law 354; Environmental Law 427; Environmental Law 659

#### 8. ---- Soil, hazardous waste

Sample data showing toluene in groundwater and toluene tank excavation pit at 360,000 parts per million supported jury finding that soil was contaminated with toluene and was hazardous waste as defined in regulations implementing the Resource Conservation and Recovery Act, even though tests showed that soil was also contaminated by nonhazardous chemicals. U.S. v. MacDonald & Watson Waste Oil Co., C.A.1 (R.I.) 1991, 933 F.2d 35. Environmental Law 427

#### 9. ---- Miscellaneous hazardous wastes

Evidence was sufficient to support finding that defendant unlawfully discharged and unlawfully disposed of a "hazardous waste" covered by the Resource Conservation and Recovery Act (RCRA), for purposes of Sentencing Guideline allowing for two-point enhancement for conviction involving drug manufacture in which there was a waste disposal or discharge; certain constituents of methamphetamine ingredients were discovered at the production sites, and constituent substances were listed under RCRA as hazardous substances. U.S. v. MacDonald, C.A.9 (Mont.) 2003, 339 F.3d 1080. Sentencing And Punishment 686

Environmental Protection Agency (EPA) reasonably interpreted term "hazardous waste" as used in Resource Conservation Recovery Act (RCRA) as presumptively including mixtures and derivatives of listed hazardous wastes; it was reasonable for EPA to assume that all such mixtures and derivatives were hazardous until shown otherwise, rather than assuming nearly impossible affirmative burden of anticipating and analyzing in listing decision hazardous of every conceivable mixture or derivative. American Chemistry Council v. E.P.A., C.A.D.C.2003, 337 F.3d 1060, 358 U.S.App.D.C. 18. Environmental Law 427

Chromic acid was "hazardous waste" despite conditions under which it was being stored. U.S. v. Dean, C.A.6 (Tenn.) 1992, 969 F.2d 187, rehearing denied, certiorari denied 113 S.Ct. 1852, 507 U.S. 1033, 123 L.Ed.2d 475. Environmental Law 427

Finding that dimethyl polysulfide was hazardous waste, within meaning of criminal provisions of Resource Conservation and Recovery Act (RCRA), was sufficiently supported by evidence that its "flash point" was less than 140° F. U.S. v. Dee, C.A.4 (Md.) 1990, 912 F.2d 741, certiorari denied 111 S.Ct. 1307, 499 U.S. 919, 113 L.Ed.2d 242. Environmental Law 756

Stormwater runoff was not "dumping of solid waste," as defined by Resource Conservation and Recovery Act (RCRA), since improvement project involved construction activities and more than five acres of land. Jones v. E.R. Snell Contractor, Inc., N.D.Ga.2004, 333 F.Supp.2d 1344, affirmed 120 Fed.Appx. 786, 2004 WL 2157261, certiorari denied 125 S.Ct. 1735, 544 U.S. 962, 161 L.Ed.2d 603. Environmental Law 354

Perchlorate that allegedly traveled from contaminated site to nearby wells, which belonged to water district and water companies that served residential customers, was a "hazardous substance" under CERCLA, as required to establish *prima facie* case for cost recovery and contribution under CERCLA; evidence including expert testimony established that perchlorate was a strong oxidizing agent and

ignitable, as required to satisfy definition of "hazardous waste" under the Solid Waste Disposal Act. Castaic Lake Water Agency v. Whittaker Corp., C.D.Cal.2003, 272 F.Supp.2d 1053. Environmental Law ↗ 440; Environmental Law ↗ 465; Evidence ↗ 571(6)

Leaking petroleum is "solid or hazardous waste" supporting citizen suit under Resource Conservation and Recovery Act (RCRA) section providing for citizen suits against persons contributing to handling, storage, treatment, transportation or disposal of any solid or hazardous waste which may present imminent and substantial endangerment to health or environment; by including word "leaking" in its definition of word "disposed," statute incorporates change in usefulness which occurs when gasoline leaks into, and contaminates, soil, at which point it cannot be re-used or recycled. Dydio v. Hesston Corp., N.D.Ill.1995, 887 F.Supp. 1037. Environmental Law ↗ 427

Dry combustible waste, paper towels, aqueous waste, laboratory waste, oil, rags, trash and spent solvents formerly burned in an incinerator and stored pending resumption of plutonium recovery operations, as well as incinerator residues, were hazardous wastes under Resource Conservation and Recovery Act, although mixed with plutonium; neither waste nor plutonium mixed with it was available for immediate reuse and did not pass continuously from one production process to another as required for recycling exemption to hazardous waste classification. Sierra Club v. U.S. Dept. of Energy, D.Colo.1990, 734 F.Supp. 946. Environmental Law ↗ 484; Environmental Law ↗ 427

#### 10. Municipality

Environmental Protection Agency (EPA) lacked authority to approve Indian tribe's solid waste permitting process under subsection of Resource Conservation and Recovery Act (RCRA) requiring states to submit solid waste management plans to EPA for review and approval, as RCRA defined Indian tribe as municipality not state. Backcountry Against Dumps v. E.P.A., C.A.D.C.1996, 100 F.3d 147, 321 U.S.App.D.C. 331. Environmental Law ↗ 355

Municipality is defined to mean "an Indian tribe or authorized tribal organization". Blue Legs v. U.S. E.P.A., D.S.D.1987, 668 F.Supp. 1329, affirmed 867 F.2d 1094, rehearing denied.

#### 11. Person

The United States is not a person within this section. McClellan Ecological Seepage Situation (MESS) v. Weinberger, E.D.Cal.1986, 655 F.Supp. 601, vacated 47 F.3d 325, certiorari denied 116 S.Ct. 51, 133 L.Ed.2d 16.

#### 12. Procuring agency

Recycling organization's action challenging Environmental Protection Agency (EPA) guidelines for government procurement of products containing re-refined oil, retread tires and recycled building insulation products was ripe for judicial review; although guidelines had not been adopted by other procuring agencies, EPA was itself a procuring agency. National Recycling Coalition, Inc. v. Browner, C.A.D.C.1993, 984 F.2d 1243, 299 U.S.App.D.C. 405. Environmental Law ↗ 662

#### 13. Solid waste--Generally

Spent munitions and their remains accumulating on gun club's property did not constitute "solid waste" under Resource Conservation and Recovery Act (RCRA), and thus club was not required under RCRA to obtain permit to operate hazardous waste disposal facility, despite contention that lead shot accumulates involved discarded material, where munitions had come to rest on land as result of their proper and expected use. Cordiano v. Metacon Gun Club, Inc., C.A.2 (Conn.) 2009, 575 F.3d 199. Environmental Law ↗ 432

In determining whether material is "solid waste" under Resource Conservation and Recovery Act (RCRA), court may consider: (1) whether material is destined for beneficial reuse or recycling in continuous process by generating industry itself, (2) whether materials are being actively reused, or whether they merely have potential of being reused, and (3) whether materials are being reused by

original owner, as opposed to use by salvager or reclaimer. Safe Air for Everyone v. Meyer, C.A.9 (Idaho) 2004, 373 F.3d 1035, certiorari denied 125 S.Ct. 1973, 544 U.S. 1018, 161 L.Ed.2d 856. Environmental Law ↗ 354; Environmental Law ↗ 372

For purposes of regulation providing that "discarded material" is hazardous waste subject to provisions of Resource Conservation and Recovery Act (RCRA), "discarded" does not necessarily mean finally and forever discarded, but rather, can mean discarded once; thus, previously discarded solid waste, although it may at some point be recycled, nonetheless remains solid waste. U.S. v. ILCO, Inc., C.A.11 (Ala.) 1993, 996 F.2d 1126. Environmental Law ↗ 427

Environmental Protection Agency (EPA) mistakenly determined residue produced from smelting metal-laden hazardous wastes was exempt from statutory restrictions on land disposal of hazardous wastes; plausible reading of statute was that waste remained "discard," and thus regulated solid waste, even when undergoing metal reclamation procedures. American Petroleum Institute v. U.S. E.P.A., C.A.D.C.1990, 906 F.2d 729, 285 U.S.App.D.C. 35. Environmental Law ↗ 430

Environmental Protection Agency exceeded scope of its jurisdiction to regulate "solid waste," statutorily defined as "discarded material," by including material destined for reuse in industry's ongoing production process; plain language of statute did not encompass materials retained for immediate reuse, and legislative intent, to deal with problems of solid waste disposal, indicated that Congress was using term "discarded" in its ordinary sense. American Min. Congress v. U.S. E.P.A., C.A.D.C.1987, 824 F.2d 1177, 263 U.S.App.D.C. 197. Environmental Law ↗ 372; Environmental Law ↗ 354

Broader statutory definition of solid waste, rather than narrower regulatory definition, applied to materials that truck-parts company took to smelting facility for processing in action brought by state department of toxic substances control (DTSC) to abate imminent hazard to health or environment under Resource Conservation and Recovery Act (RCRA). California Dept. of Toxic Substances Control v. Interstate Non-Ferrous Corp., E.D.Cal.2003, 298 F.Supp.2d 930. Environmental Law ↗ 700

Ordnance used by Navy during training exercises did not become "discarded material" as soon as it was fired and made contact with land in live impact area, and thus could not be considered to be "solid waste" under Resource Conservation and Recovery Act (RCRA). Water Keeper Alliance v. U.S. Dept. of Defense, D.Puerto Rico 2001, 152 F.Supp.2d 163.

Petroleum contamination of soil and groundwater from gasoline service station constituted "solid waste" under Resource Conservation and Recovery Act's (RCRA) citizen suit provision; once petroleum leaked into soil or groundwater, it ceased to be useful, and petroleum left behind from commercial operations comports with being abandoned. Waldschmidt v. Amoco Oil Co., C.D.Ill.1996, 924 F.Supp. 88. Environmental Law ↗ 427; Environmental Law ↗ 354

For purposes of Resource Conservation and Recovery Act (RCRA), citizen suit provisions, solid waste is defined very broadly and is any discarded material, but does not include materials that are still useful products. Zands v. Nelson, S.D.Cal.1991, 779 F.Supp. 1254. Environmental Law ↗ 354

13a. ---- Discarded, solid waste

Term "discarded" in Resource Conservation and Recovery Act (RCRA) definition of "solid waste" cannot encompass materials that are destined for beneficial reuse or recycling in continuous process by generating industry itself; material destined for future recycling by another industry may be considered "discarded" but is not necessarily so. Safe Food and Fertilizer v. E.P.A., C.A.D.C.2003, 350 F.3d 1263, 358 U.S.App.D.C. 416, rehearing en banc denied, on rehearing in part 365 F.3d 46, 361 U.S.App.D.C. 134, reconsideration denied. Environmental Law ↗ 354; Environmental Law ↗ 372

Clay target debris and lead shot from ammunition used as intended at a shooting range is not discarded, and thus does not come within definition of "solid waste" or definition of "hazardous waste" in Resource Conservation and Recovery Act (RCRA), and instead falls outside RCRA's ambit. Otay Land Co. v. U.E. Ltd., L.P., S.D.Cal.2006, 440 F.Supp.2d 1152, vacated 2009 WL 2179739.

Environmental Law 42714. ---- Containers, solid waste

For purposes of challenge to Environmental Protection Agency's beverage container guideline requirement that all beverage containers sold at federal facilities be made returnable by the requirement of a 5¢ deposit, beverage containers were "solid waste" even prior to being discarded and thus were a proper subject of regulation. U. S. Brewers Ass'n, Inc. v. Environmental Protection Agency, C.A.D.C.1979, 600 F.2d 974, 195 U.S.App.D.C. 160. Environmental Law 372; Environmental Law 354

14a. ---- Discarded material, solid waste

Battery parts taken by truck-parts company to smelting facility for processing were "discarded material," and thus were "solid waste" under Resource Conservation Recovery Act (RCRA). California Dept. of Toxic Substances Control v. Interstate Non-Ferrous Corp., E.D.Cal.2003, 298 F.Supp.2d 930. Environmental Law 370

15. ---- Domestic sewage, solid waste

"Domestic sewage" within meaning of Resource Conservation and Recovery Act which defines solid waste to exclude solid or dissolved material in domestic sewage referred to sewage coming from residences and did not include industrial waste that was mixed with untreated sanitary waste from workplaces; exclusion of domestic sewage from definition of solid waste referred to point of origin. Comite Pro Rescate De La Salud v. Puerto Rico Aqueduct and Sewer Authority, C.A.1 (Puerto Rico) 1989, 888 F.2d 180, certiorari denied 110 S.Ct. 1476, 494 U.S. 1029, 108 L.Ed.2d 613.

Environmental Law 371

16. ---- Garbage or refuse, solid waste

It is worthlessness of object that makes it "refuse" or "garbage", which is required characteristic of hazardous waste under CERCLA. U.S. v. Wedzeb Enterprises, Inc., S.D.Ind.1994, 844 F.Supp. 1328. Environmental Law 440

Otherwise useless product that, for whatever reason, has value to individual purchaser cannot escape classification as "refuse" or "garbage" within meaning of Solid Waste Disposal Act or as hazardous waste under CERCLA. U.S. v. Wedzeb Enterprises, Inc., S.D.Ind.1992, 809 F.Supp. 646.

Environmental Law 427; Environmental Law 440; Environmental Law 354

16a. ---- Recycled materials, solid waste

Inasmuch as court could uphold agency decision only on basis of evidence used by agency during rulemaking proceedings, Environmental Protection Agency (EPA) would be required to provide more detailed explanation of its risk assessment study upon which it had relied, but which was difficult for non-judges to interpret, in determining that environmental impacts of metal contaminants in recycled fertilizers would be substantially similar to those of analogous products made from virgin materials; court could not use third-party study indicating that proposed limits were considerably below safe levels, where EPA did not rely on study, even though EPA asserted that results of studies were roughly equivalent. Safe Food and Fertilizer v. E.P.A., C.A.D.C.2004, 365 F.3d 46, 361 U.S.App.D.C. 134, reconsideration denied. Environmental Law 698

Recycled materials used to make zinc fertilizers were not "solid waste" under Resource Conservation and Recovery Act (RCRA), so long as they had not been "discarded" and they did not have to be literally identical to virgin material, so long as differences were so slight, from health and environmental risk perspective, as to be substantively meaningless. Safe Food and Fertilizer v. E.P.A., C.A.D.C.2003, 350 F.3d 1263, 358 U.S.App.D.C. 416, rehearing en banc denied, on rehearing in part 365 F.3d 46, 361 U.S.App.D.C. 134, reconsideration denied. Environmental Law 354; Environmental Law 372

16b. ---- Organic matter, solid waste

Grass residue left following harvest of Kentucky bluegrass was not "solid waste," and thus commercial Kentucky-bluegrass farmers' open burning of residue did not violate Resource Conservation and Recovery Act (RCRA), since farmers realized benefits from reusing grass residue in process of open burning; burnt grass residue ash helped fertilize fields, open burning reduced incidence of weed, fungi, and insect infestation, and open burning blackened fields, contributing to optimal conditions for next bluegrass harvest. Safe Air for Everyone v. Meyer, C.A.9 (Idaho) 2004, 373 F.3d 1035, certiorari denied 125 S.Ct. 1973, 544 U.S. 1018, 161 L.Ed.2d 856. Environmental Law 354; Environmental Law 372

17. ---- Gas, solid waste

Environmental Protection Agency (EPA) regulation designating oil-bearing wastewaters generated by petroleum refining industry as solid waste at time of primary treatment, pursuant to Resource Conservation and Recovery Act (RCRA), was arbitrary and capricious, absent any explanation as to why industry's motivation of compliance with Clean Water Act requirements predominated over motivation of reclaiming residual oil from wastewater in conducting such treatment or as to why such motivation of compliance compelled conclusion that wastewater had been discarded at that time rather than remaining part of in-process oil production. American Petroleum Institute v. U.S. E.P.A., C.A.D.C.2000, 216 F.3d 50, 342 U.S.App.D.C. 159, as amended, rehearing and rehearing en banc denied. Environmental Law 427

Petroleum spilled or leaked from underground storage tank used in commercial operations is "solid waste" within meaning of Resource Conservation and Recovery Act (RCRA) and, thus, may be actionable in citizens suit under RCRA; petroleum ceases to be useful after it has entered soil or groundwater and may be deemed to have been abandoned. Craig Lyle Ltd. Partnership v. Land O'Lakes, Inc., D.Minn.1995, 877 F.Supp. 476. Environmental Law 427; Environmental Law 354

Although gasoline is a useful product, once it leaks into and contaminates the soil, it is no longer a useful product and thus becomes "discarded material" constituting "solid waste" for purposes of the citizen's suit provision of the Resource Conservation and Recovery Act (RCRA). Zands v. Nelson, S.D.Cal.1991, 779 F.Supp. 1254. Environmental Law 427; Environmental Law 354

18. ---- Industrial discharges authorized by permits, solid waste

Mere possession of permit for discharge of pollutants into navigable waters does not exempt discharger from Hazardous and Solid Waste Amendments to Resource Conservation and Recovery Act, rather, to be exempt from requirements of Resource Conservation and Recovery Act, discharger must be required by Clean Water Act to have permit. Inland Steel Co. v. E.P.A., C.A.7 1990, 901 F.2d 1419, rehearing denied. Environmental Law 430

Exclusion contained in section of Resource Conservation and Recovery Act (RCRA) excluding from definition of solid waste industrial discharges certain discharges authorized by permit had no application in citizens' suit under RCRA where defendant had not established that actual discharges from point sources were made pursuant to or authorized by permit. Lutz v. Chromatex, Inc., M.D.Pa.1989, 725 F.Supp. 258. Environmental Law 432

Manufacturing plant's washing of grates used in manufacturing process over storm drain on the facility was not covered by Resource Conservation and Recovery Act of 1976 [42 U.S.C.A. § 6901 et seq.]. Fishel v. Westinghouse Elec. Corp., M.D.Pa.1985, 617 F.Supp. 1531. Environmental Law 353

19. ---- Lead, solid waste

Lead shot and clay targets dumped by gun club into Long Island Sound had accumulated long enough to be considered "solid waste," for purposes of suit under Resource Conservation and Recovery Act (RCRA). Connecticut Coastal Fishermen's Ass'n v. Remington Arms Co., Inc., C.A.2 (Conn.) 1993, 989

F.2d 1305. Environmental Law ↗ 354

Lead from spent ammunition deposited at site of trap and skeet shooting range had not been abandoned or left to accumulate since range first opened, but rather had been reclaimed by range's operators on several occasions, and therefore lead located at site did not qualify as "solid waste" under Resource Conservation and Recovery Act (RCRA) even if spent ammunition could be deemed to change to "solid waste" if left untouched for lengthy period of time. Otay Land Co. v. U.E. Ltd., L.P., S.D.Cal.2006, 440 F.Supp.2d 1152, vacated 2009 WL 2179739. Environmental Law ↗ 427

Solder dross taken by truck-parts company to smelting facility for processing to recover lead was "discarded material," and thus was "solid waste" under Resource Conservation Recovery Act (RCRA). California Dept. of Toxic Substances Control v. Interstate Non-Ferrous Corp., E.D.Cal.2003, 298 F.Supp.2d 930. Environmental Law ↗ 370

19a. ---- Munitions, solid waste

Spent munitions and their remains accumulating on gun club's property did not constitute "solid waste" under Resource Conservation and Recovery Act (RCRA), and thus club was not required under RCRA to obtain permit to operate hazardous waste disposal facility, despite contention that lead shot accumulates involved discarded material, where munitions had come to rest on land as result of their proper and expected use. Cordiano v. Metacon Gun Club, Inc., C.A.2 (Conn.) 2009, 575 F.3d 199. Environmental Law ↗ 432

20. ---- Nuclear or byproduct materials, solid waste

Resource Conservation and Recovery Act (RCRA) is not clearly intended to regulate radioactive mixed wastes, or to exclude them from coverage. State of N.M. v. Watkins, C.A.D.C.1992, 969 F.2d 1122, 297 U.S.App.D.C. 122. Environmental Law ↗ 491

Washington's Cleanup Priority Act's (CPA) regulation of radioactive component of mixed waste did not fall within scope of state's authority under Resource and Conservation Recovery Act (RCRA) to manage hazardous waste, and thus was preempted by Atomic Energy Act, even if there were non-safety rationale for CPA, where CPA made presence of radioactive materials, whether or not component of "mixed waste," as defined by CPA, trigger for all of its requirements. U.S. v. Manning, E.D.Wash.2006, 434 F.Supp.2d 988, affirmed 527 F.3d 828. Environmental Law ↗ 481; States ↗ 18.31

The Atomic Energy Act regulates nuclear material, regardless of whether it is considered waste, and the most reasonable reconciliation of Resource Conservation and Recovery Act with Atomic Energy Act is that AEA facilities are subject to the RCRA except as to those wastes which are expressly regulated by the AEA, i.e., nuclear and Medioactive Materials. Legal Environmental Assistance Foundation, Inc. v. Hodel, E.D.Tenn.1984, 586 F.Supp. 1163. Environmental Law ↗ 480

21. ---- Sludge, solid waste

Environmental Protection Agency's (EPA) conclusion that sludges from wastewater from metal smelting operations that was stored in surface impoundments and that at some time in the future could be reclaimed were "discarded" and thus "solid waste" under Resource Conservation and Recovery Act (RCRA) was reasonable and consistent with statutory purposes of the Act. American Min. Congress v. U.S. E.P.A., C.A.D.C.1990, 907 F.2d 1179, 285 U.S.App.D.C. 173. Environmental Law ↗ 427

Wastewaters discharged into metal finishing company's holding ponds were "solid waste" subject to regulation by the Resource Conservation and Recovery Act, even though wastewaters may have been subject at all relevant times to regulation under the National Pollutant Discharge Elimination System; exclusion from the definition of solid waste for discharges made pursuant to NPDES permit does not cover sludges that are generated by industrial wastewater treatment. U.S. v. Allegan Metal Finishing Co., W.D.Mich.1988, 696 F.Supp. 275, appeal dismissed 867 F.2d 611. Environmental Law ↗ 427;

Environmental Law 354

## 21a. ---- Fertilizers, solid waste

In absence of any health and environmental risks, Environmental Protection Agency (EPA) could reasonably treat dioxin concentration levels of 8 parts per trillion (ppt) found in fertilizers made from recycled materials and 1 ppt found in virgin fertilizers as identical for purposes of finding that recycled materials were not "discarded" within meaning of Resource Conservation and Recovery Act (RCRA) definition of "solid waste." Safe Food and Fertilizer v. E.P.A., C.A.D.C.2003, 350 F.3d 1263, 358 U.S.App.D.C. 416, rehearing en banc denied, on rehearing in part 365 F.3d 46, 361 U.S.App.D.C. 134, reconsideration denied. Environmental Law 354; Environmental Law 372

## 22. Storage

Vendor's sale to purchaser of industrial property with abandoned asbestos insulation in boiler-based steam heating system was not "handling, storage, treatment, transportation, or disposal of any solid or hazardous waste" that could imminently and substantially endanger health or environment, as required for violation of RCRA, since vendor took no affirmative action in abandoning asbestos insulation. Sycamore Indus. Park Associates v. Ericsson, Inc., C.A.7 (Ill.) 2008, 546 F.3d 847, rehearing and rehearing en banc denied, certiorari denied 129 S.Ct. 2002, 173 L.Ed.2d 1087. Environmental Law 430

Plaintiffs failed to state cause of action against gun club alleging that club operated hazardous waste storage facility without a permit in violation of Resource Conservation and Recovery Act arising out of lead shot and clay target debris in Long Island Sound; lead shot and clay targets now scattered in waters of Long Island Sound at no time had been contained or held. Connecticut Coastal Fishermen's Ass'n v. Remington Arms Co., Inc., C.A.2 (Conn.) 1993, 989 F.2d 1305. Environmental Law 432; Environmental Law 430

Metal refinishing facility's retention of three open waste piles composed of contaminated soil excavated from beneath plating tanks did not constitute illegal "storage" of hazardous waste, under RCRA and Colorado regulations, but rather constituted continuing "disposal." U.S. v. Power Engineering Co., D.Colo.1998, 10 F.Supp.2d 1145, affirmed 191 F.3d 1224, certiorari denied 120 S.Ct. 1718, 529 U.S. 1086, 146 L.Ed.2d 640. Environmental Law 430

Inactive hazardous waste pit on Air Force Base was not used to "store" hazardous wastes, so as to require permit under Resource Conservation and Recovery Act (RCRA), where undisputed evidence established that waste placed in pits was intended for permanent disposal and that no waste disposal had occurred since date that Environmental Protection Agency's (EPA's) permit regulations took effect. McClellan Ecological Seepage Situation (MESS) v. Cheney, E.D.Cal.1989, 763 F.Supp. 431, vacated 47 F.3d 325, certiorari denied 116 S.Ct. 51, 516 U.S. 807, 133 L.Ed.2d 16. Environmental Law 432

## 23. Treatment

Environmental Protection Agency's (EPA's) regulation of resource recovery from hazardous waste was permissible under Resource Conservation and Recovery Act (RCRA), and EPA acted reasonably in incorporating resource recovery within regulatory definition of "treatment," despite absence of words "resource recovery" in statutory definition of "treatment" and absence of any specific discussion of resource recovery in subtitle creating "cradle-to-grave" regulatory system. Shell Oil Co. v. E.P.A., C.A.D.C.1991, 950 F.2d 741, 292 U.S.App.D.C. 332, rehearing denied. Environmental Law 430; Environmental Law 427

42 U.S.C.A. § 6903, 42 USCA § 6903

Current through P.L. 111-125 approved 12-28-09

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END OF DOCUMENT

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REPORT OF DAILY CONSTRUCTION ACTIVITIES

STED FOR: Mr. Don Cheline  
Port Freeport  
P.O. Box 615  
Freeport, TX 77541

PROJECT: New Velasco Terminal  
Site work  
Freeport, TX

TE: July 25, 2007

PSI REPORT NO.: 218-70077-49

MARKS: A *PSI* representative reported to the above referenced project to monitor construction activities and preform required testing.

The West end of Fill ARea #1, both North and South, has approximately 1" of water standing on it. This is the area that the representative had requested that even if meant forcing water into the existing lift, to go on and seal and make sure the area would drain. The *PSI* representative felt the risk of losing some strength was worth the gamble in view of the weather forecast. Instead, we had a solid mass of water from the North edge to South edge and West end to the construction fence.

This is not what the *PSI* representative requested, not what the specifications require, and not what the RLB fill and compaction submittal indicates. This failure is just setting the schedule further back and forcing the use of lime. This combined with the failure to get the full 24" allowed by the Goldston submittal -A03055-00- has seriously impacted work in this area, despite the *PSI* representative convincing Dr. S.N. Endley to relax *PSI*'s normally rigid tolerances for fear of blowing out this area.

Currently, in Area 1 North side end, we have approximatley 3900 cu. yds. that has been tested and passed. The *PSI* representative and Bob Lewis with Port Freeport have gone back several times looking of a visible lift and do not see it. The *PSI* representative also has concerns about whether the 18" placed over the soft area is actually there now or if it has been driven downward.

The *PSI* reprsentative spoke with the RLB representative about these concerns and will get shots to verify elevations as soon as it is feasible.

If you should have any questions, please do not hesitate to contact us at your earliest convenience.

Respectfully Submitted,

*Professional Service Industries, Inc.*

Tech: Harold Ammons  
Time: 9:30 am - 5:30 pm

CONSTRUCTION PROGRESS MEETING AGENDA  
PORT FREEPORT, TEXAS  
VELASCO TERMINAL SITE CIVIL PROJECT

Project: Velasco Terminal Site Civil Project – GEI PN: A03055-00; POF PN: 06-06

Date/Time: September 25, 2007, 2:00 p.m.

Location: Port Freeport Operations Building Conference Room, Freeport, Texas

Owner: Port Freeport, Texas  
P.O. Box 615  
Freeport, Texas 77542-0615  
Director of Engineering – David Knuckey, P.E.  
(979) 233-2667/4257

Engineer: Contractor:

Goldston Engineering, Inc. RLB Contracting, Inc  
5850 San Felipe, Suite 650 410 Broadway St  
Houston, Texas 77057 Port Lavaca, TX, 77979  
Project Manager: Wm Goldston, P.E. Project Manager: Randy L. Boyd  
(713) 977-8291 Ext. 187 (361)-552-2104

**I. Review Action Items from Progress Meeting No. 3**

- Rotate fleeting office and add 2-inch waterline to barges near the fleeting office.
- Remove light poles from the discharge channel to the parking area.
- Make a recommendation concerning the organics found in the soil on the north side of the discharge channel.
- Work with Contractor to resolve lime dust nuisance during mixing.

**II. Address Kirby Corp Concerns**

- ~~TRUING FOUNDATION SCHEDULE ? DECEMBER~~  
• ~~DOCK BARGE PILING ? - NONE. KIRBY TO SUPPLY~~  
• ~~MANUFACTURER TO MAKE REPAIRS. ENGINEER TO WORK WITH CONTRACTOR, NOT VENDOR~~

**III. Construction Progress**

- Discuss issues with Manitowoc 4500. ~~UP & RUNNING~~
- Shoreblock mats damaged/repaired. Manufacturer's representative to be on-site during installation. ~~AGREED TO MAKE REPAIRS. ENGINEER TO WORK WITH CONTRACTOR, NOT VENDOR~~
- Electrical design changes requested by subcontractor due to material availability approved. - ~~DUKE~~
- Rotating fleeting office 90 degrees.
- Temporary Channel Crossing ~~Permit~~ submitted and in review. -
- Discuss soils report concerning recommendations for ~~RECOMMENDATIONS~~ ~~NONE~~

**IV. Review Construction Schedule**

- Change Order No. 3 extends contract completion date to December 2, 2007. ~~(1204514 SEPT.)~~
- RLB to submit a revised construction schedule with change orders incorporated. ~~BY OCT. 5<sup>TH</sup>~~
- Discuss result of considering 24 hour shifts. ~~LOOKING AT IT.~~
- Discuss Maximum volume of haul per day less than 4,000 cy.

~~LOGISTICALLY THERE IS NO PLACE TO PUT ADDITIONAL EQUIPMENT.~~  
K:\PROJECTS\HOU2003\PROJECTS\A03055-00 (H) PORT FREEPORT BERTH 714-CONSTRUCTION\Velasco Terminal Site Civil  
Project\Meetings\2007 09 25 Construction Progress Meeting Agenda.doc

## V. Application for Payment

- Pay request concerns about materials on-hand. Contractor notified of request for additional breakdown of shipping and handling costs.

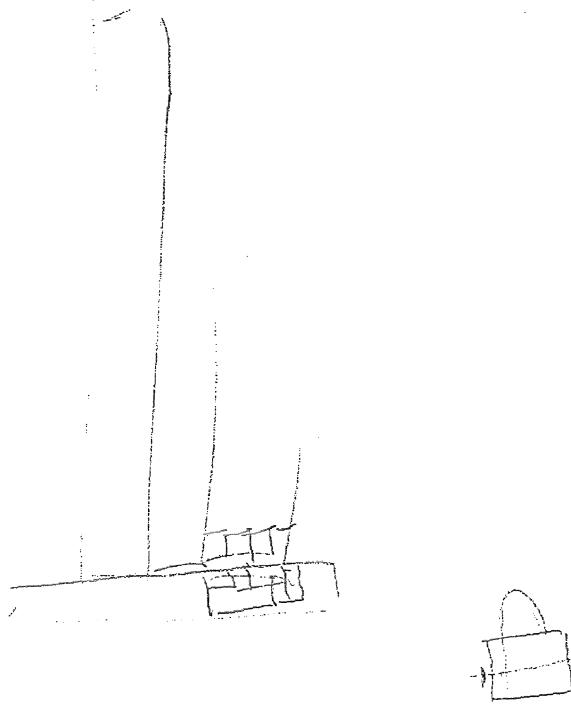
## VI. Construction Submittals

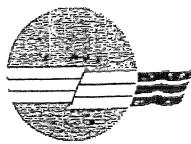
- No new construction submittals.

Oct. 23<sup>rd</sup> 2:00pm

9/11

9/12





## **GOLDSTON ENGINEERING, INC.**

5850 San Felipe, Suite 650  
Houston, TX 77057  
Phone (713) 977-8291 • Fax (713) 977-7466  
e-mail: [gei@goldstonengr.com](mailto:gei@goldstonengr.com)

May 1, 2008

A03055-00

Port Freeport  
200 West Second Street, 3<sup>rd</sup> Floor  
Freeport, TX 77541

**ATTN: DAVID KNUCKEY, DIRECTOR OF ENGINEERING**  
**RE: RESPONSE TO CONTRACT COMMENT**

Dear Sir,

On May 2, 2008 a Notice of Claim was issued by RLB Contracting, Inc. requesting that the Contract Price and schedule be adjusted for delays arising from an April 4, 2008 directive by Port Freeport to cease using pelletized lime. Following our review of the claim and background circumstances, we note the following:

1. RLB's handling of the pelletized lime created a hazardous environmental condition as a result of lime dust blowing over adjacent property (Freeport Launch). Complaints from this property owner brought this condition to Port Freeport's attention, and led to the April 4, 2008 directive to cease using the lime, thereby eliminating the hazard. Port Freeport's action was made necessary by Contractor's failure to comply with Article 4.06 D of the General Conditions, which requires Contractor to immediately stop all work in connection with a hazardous environmental condition.
2. Issues with lime dust creating an environmental hazard had been addressed in a teleconference on August 27, 2007 (see attached minutes). Based on the teleconference, RLB understood that use of pelletized lime would be restricted to favorable wind conditions, that use of water spray for dust control may be needed, and that caution was required regarding the speed of machinery spreading the lime.
3. During an April 9, 2008 meeting, RLB was requested to submit proposals for finishing the job without the use of lime. They were advised not to use pelletized lime, and to stockpile material too wet to compact until it could be worked. There was some discussion that lime slurry could be safely used, but this approach for eliminating the hazard was judged ineffective as a drying agent.
4. On April 29, 2008 RLB was advised that their proposals for finishing the work without the use of lime were not accepted, and they should continue to perform work in accordance with the contract. They could continue using lime provided they did not create a hazardous environmental condition in doing so.

Should you have any questions or require any additional information, please call our office at 713-977-8291.

Regards,

GOLDSTON ENGINEERING, INC.

Jerome F. Thibeaux, P.E.  
Senior Project Manager

not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

#### 4.05 *Reference Points*

A. Engineer or Owner shall provide engineering surveys to establish reference points for construction which in Engineer's or Owner's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

#### 4.06 *Hazardous Environmental Condition at Site*

A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the Engineer in the preparation of the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered to Contractor written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.

F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of

RE Velasco Terminal Site-Civil Bid Package.txt

From: Thibeaux, Jerry  
Sent: Tuesday, January 23, 2007 6:33 AM  
To: David Knuckey; Goldston, William  
Cc: Don Cheline; Linda Matcheski  
Subject: RE: Velasco Terminal, Site-Civil Bid Package

We like the second option, but were concerned that if other drying agents were used it might be considered a change. Shailendra considers this unlikely, so we would add a Unit Rate price per dry lime, with an estimated quantity of 15,000 tons.

-----Original Message-----

From: David Knuckey [mailto:knuckey@portfreeport.com]  
Sent: Friday, January 19, 2007 3:00 PM  
To: Thibeaux, Jerry; Goldston, William  
Cc: Don Cheline; Linda Matcheski  
Subject: Velasco Terminal, Site-Civil Bid Package

Jerry, William,

Had a chance to talk to Pete and Phyllis this morning and we decided to hold the construction period to 180 days. This will require a fair amount of lime as a chemical drying agent. I suggest we add a bid item for lime stabilization based on either a cubic yard or square yard, 12" depth basis. The other option is to have them bid on the chemical lime treatment on a per ton of lime at 5% by volume of soil-lime mix basis based on the following assumptions:

1. Assume 30% of excavation will need lime treatment ( $365,000 \text{ CY} \times 0.3 = 109,500 \text{ CY}$ ).
2. Assume 5% lime content by volume ( $109,500 \times 0.05 = 5,475 \text{ CY lime}$ )

This equates to  $(5,475 \text{ CY}) \times (27 \text{ CF/CY}) \times (3.3 \times 62.4 \text{ lbs/CF}) / 2,000 \text{ lbs/ton} = 15,220 \text{ tons}$

Dave Knuckey  
Port Freeport

17

When new base material is mixed with the existing base material, furnishing and delivery of the new base will be paid for as "Flexible Base (Roadway Delivery)" for the type, grade, and class shown on the plans, in accordance with Article 247.5. All manipulation including mixing, spreading, blading, shaping and finishing of the new and existing base material will not be paid for directly, but will be considered subsidiary to this Item.

When "Ordinary Compaction" is shown on the plans, all sprinkling and rolling, except proof rolling, will not be paid for directly but will be considered subsidiary to this Item, unless otherwise shown on the plans.

When "Density Control" is shown on the plans, all sprinkling and rolling, except proof rolling, will not be paid for directly but will be considered subsidiary to this Item.

When proof rolling is shown on the plans and when directed by the Engineer, it will be paid for in accordance with Item 216, "Rolling (Proof)".

When subgrade is constructed under this project, correction of soft spots will be at the Contractor's expense. When subgrade is not constructed under this project, correction of soft spots will be in accordance with Article 9.3.

Removal of any asphaltic material will be paid for in accordance with the applicable bid items.

#### ITEM 260

##### LIME TREATMENT FOR MATERIALS USED AS SUBGRADE (ROAD MIXED)

**260.1. Description.** This Item shall govern for treating the new or existing subgrade, the existing pavement structure or a combination thereof to be used as subgrade by pulverizing, adding lime, mixing, and compacting the mixed material as specified in this Item.

#### 260.2 to 260.3 260.2. Materials.

**(1) Lime.** The lime shall meet the requirements of Item 264, "Lime and Lime Slurry", for the type of lime specified.

The Contractor shall have the option of selecting from the types shown on the plans, the type of lime to be used. The Engineer shall be notified in writing before changing the source or type.

All lime slurries used in "Slurry Placing" shall be furnished at or above the minimum "Dry Solids" content as approved by the Engineer.

**(2) Water.** Water shall meet the material requirements of Item 204, "Sprinkling".

**(3) Asphalt.** Asphalt shall conform to the requirements of Item 300, "Asphalts, Oils and Emulsions".

#### 260.3. Equipment.

**(1) General.** The machinery, tools and equipment necessary for proper prosecution of the work on this Item shall be on the project and approved by the Engineer prior to beginning this Item.

All machinery, tools and equipment used shall be maintained in a satisfactory working condition.

#### (2) Lime Storage.

Both quicklime and hydrated lime in dry form shall be suitably stored in closed, weatherproof containers until immediately before use. Storage bins, when used, shall be completely enclosed. Hydrated lime in bags shall be stored in weatherproof buildings with adequate protection from ground dampness. Type C Quicklime, when permitted by the Engineer, shall be shipped only in bulk; bagged material will not be acceptable.

#### (3) Lime Weight Verification.

When lime is furnished in trucks, the weight of lime shall be determined on certified scales or the Contractor shall provide a set of standard platform truck scales at a location approved by the Engineer. Scales shall conform to the requirements of Item 520, "Weighing and Measuring Equipment".

When Type A Hydrated Lime is furnished in bags, each bag shall bear the manufacturer's certified weight. Bags varying more than five (5) percent from that weight may be rejected and the average weight of bags in any shipment, as shown by weighing 10 bags taken at random, shall not be less than the manufacturer's certified weight.

(4) **Slurry Equipment.** Type C Quicklime of Grade "DS" or "S", when used to manufacture slurry on the project, or other location approved by the Engineer shall be slurred in agitated slurry tanks. The slurring of Type C Quicklime must be handled in such a way as not to generate any dust hazardous to job personnel or to the public or be potentially damaging to any adjacent property.

The distributor truck used for slurry placing need not necessarily be equipped with an agitator; however, the slurry at the time of distribution must meet the consistency requirements specified. The Contractor shall, if necessary, use appropriate equipment to achieve the consistency requirements under Section 260.4.(4)(b).

For Type B Commercial Lime Slurry, the distributor truck shall be equipped with a sampling device in accordance with Test Method Tex-600-J, Part I.

#### 260.4. Construction Methods.

(1) **General.** The completed course shall be uniformly treated, free from loose or segregated areas, of uniform density and moisture content, well bound for its full depth and shall have a smooth surface.

(2) **Preparation of Subgrade or Existing Base.** Prior to treating existing material, it shall be shaped to conform to the typical sections, as shown on the plans or as established by the Engineer. This work shall be done in accordance with the provisions of applicable bid items. When shown on the plans, any existing asphaltic concrete pavement shall be removed and will be paid for in accordance with applicable bid items.

Before pulverizing or scarifying an existing material, when shown on the plans and when directed by the Engineer, the Contractor shall proof roll the roadbed in accordance with Item 216, "Rolling (Proof)". Soft spots shall be corrected as directed by the Engineer.

When the Contractor elects to use a cutting and pulverizing machine that will process the material to the plan depth, the Contractor will not be required to excavate to the secondary grade or windrow the material. This method will be permitted only if a machine is provided which will insure that the material is cut uniformly to the proper depth and which has cutters that will plane the secondary grade to a uniform surface over the entire width of the cut. The machine shall provide a visible indication of the depth of cut at all times.

In lieu of using the cutting and pulverizing machine, the Contractor shall excavate and windrow the material to expose the secondary grade to the typical sections, lines and grades as shown on the plans or as established by the Engineer.

(3) **Pulverization.** The existing pavement or base material shall be pulverized or scarified so that 100 percent shall pass the two (2) inch sieve.

(4) **Application.** The percentage by weight or pounds per square yard of lime to be added will be as shown on the plans and may be varied by the Engineer if conditions warrant.

Lime shall be spread only on that area where the mixing operations can be completed during the same working day, except as required for quicklime in Subarticle 260.4.(5).

Unless otherwise approved by the Engineer, the lime operation shall not be started when the air temperature is below 40 F and falling, but may be started when the air temperature is above 35 F and rising. The temperature will be taken in the shade and away from artificial heat. Lime shall not be placed when weather conditions in the opinion of the Engineer are unsuitable.

**CAUTION:** Use of quicklime can be dangerous. Users should be informed of the recommended precautions in handling, storage and use of quicklime.

The application and mixing of lime with the material shall be accomplished by the methods herein described as "Dry Placing" or "Slurry

Placing". Type A Hydrated Lime shall be applied by "Slurry Placing" unless otherwise shown on the plans or approved by the Engineer. Type B Commercial Lime Slurry shall be applied by "Slurry Placing". Type C Quicklime shall be applied by "Slurry Placing" or "Dry Placing" as shown on the plans. The method of applying Type C Quicklime may be changed if approved in writing by the Engineer. When Type C Quicklime is used for dry placement, it shall be Grade "DS". When Type C Quicklime is used for slurry placement, it shall be either Grade "DS" or Grade "S". Grade "S" shall be used in slurry placement only.

(a) **Dry Placing.** The lime shall be distributed by a spreader approved by the Engineer or by bag distribution for Type A Hydrated Lime at the rate shown on the plans or as directed by the Engineer.

The lime shall be distributed at a uniform rate and in such a manner as to reduce the scattering of lime by wind. Lime shall not be applied when wind conditions, in the opinion of the Engineer, are such that blowing lime becomes objectionable to adjacent property owners or dangerous to traffic.

A motor grader shall not be used to spread Type A Hydrated Lime, but may be used to spread Type C Quicklime, Grade "DS".

The material shall be sprinkled as approved by the Engineer.

(b) **Slurry Placing.** When Type A Hydrated Lime is specified and slurry placement is to be used, the Type A Hydrated Lime shall be mixed with water to form a slurry with a solids content approved by the Engineer.

Type B Commercial Lime Slurry shall be delivered to the project in slurry form at or above the minimum dry solids content approved by the Engineer. The distribution of lime at the rate(s) shown on the plans or approved by the Engineer shall be attained by successive passes over a measured section of roadway until the proper lime content has been secured.

When Type C Quicklime is applied as a slurry, the amount of dry quicklime shall be 80 percent of the amount shown on the plans. The slurry shall contain at least the minimum dry solids content approved by the Engineer. The residue from the slurring procedure shall be spread uniformly over the length of the roadway currently being processed unless otherwise approved by the Engineer. This residue is primarily inert material with little stabilizing value, but may contain a small amount of

quicklime particles that slake slowly. A concentration of these particles could cause the compacted stabilized material to swell during slaking.

#### Slurry Consistency Requirements

Slurry shall be of such consistency that it can be applied uniformly without difficulty.

When the distributor truck is not equipped with an agitator, the Contractor shall have a standby pump available on the project for agitating the lime and water as required by the Engineer in case of undue delays in dispersing the slurry.

(5) **Mixing.** The mixing procedure shall be the same for "Dry Placing" or "Slurry Placing" as herein described.

During the interval between application and mixing, hydrated lime that has been exposed to the open air for a period of six (6) hours or more or to excessive loss due to washing or blowing will not be accepted for payment.

The material and lime shall be thoroughly mixed by equipment approved by the Engineer. The material and lime shall be brought to the proper moisture content and may be left to cure one (1) to four (4) days as approved by the Engineer or the mixing continued until a homogeneous friable mixture of material and lime is obtained.

In addition to the above, when Type C Quicklime, Grade "DS", is used under "Dry Placing", the material and lime shall be mixed as thoroughly as possible at the time of the lime application. Sufficient moisture shall be added during the mixing to hydrate the quicklime. After mixing, and prior to compaction, the mixture of material, quicklime and water shall be moist cured for two (2) to seven (7) days, as approved by the Engineer. After curing, mixing shall continue until the pulverization requirements are met.

When shown on the plans or approved by the Engineer, the pulverization requirement may be waived when the material contains a substantial quantity of aggregate.

Following mixing, a sample of the material at roadway moisture will be obtained for pulverization testing. All nonslaking aggregates retained on the 3/4-inch sieve will be removed from the sample. The remainder of the material shall meet the following pulverization requirement when tested by Test Method Tex-101-E, Part III:

Percent
Minimum passing 1-3/4" sieve ..... 100
Minimum passing 3/4" sieve ..... 85

**(6) Compaction Methods.** Prior to compaction, the material shall be aerated or sprinkled as necessary to provide the optimum moisture. Compaction of the mixture shall begin immediately after the pulverization requirement is met.

Compaction shall continue until the entire depth of the mixture is uniformly compacted by "Ordinary Compaction" or "Density Control" as shown on the plans. Throughout this entire operation the shape of the course shall be maintained by blading, and the surface upon completion shall be smooth and in conformity with the typical sections, lines and grades as shown on the plans or as established by the Engineer.

When shown on the plans or approved by the Engineer, multiple lifts will be permitted.

**(a) Ordinary Compaction.** When "Ordinary Compaction" is shown on the plans the following provisions shall apply:

The material shall be sprinkled and rolled as directed by the Engineer. All irregularities, depressions or weak spots which develop shall be corrected immediately by scarifying the areas affected, adding or removing material as required, reshaping and recompacting by sprinkling and rolling.

Should the material lose the required stability, compaction or finish before the next course is placed or the project is accepted, it shall be reworked in accordance with Subarticle 260.4.(7). However, compaction shall be in accordance with "Ordinary Compaction".

**(b) Density Control.** When "Density Control" is shown on the plans the following provisions shall apply:

Unless otherwise shown on the plans, each course shall be sprinkled as required and compacted to the extent necessary to provide not less than 95 percent of the optimum density as determined by Test Method Tex-121-E, Part II. Roadway density testing will be as outlined in Test Method Tex-115-E.

When the material fails to meet the density requirements, or should the material lose the required stability, density or finish before the next course is placed, or the project is accepted, it shall be reworked in accordance with Subarticle 260.4.(7).

**(7) Reworking a Section.** When a section is reworked within 72 hours after completion of compaction, the Contractor shall rework the section to provide the required compaction. When a section is reworked more than 72 hours after completion of compaction, the Contractor shall add 25 percent of the specified rate of lime. Reworking shall include loosening, road mixing as approved by the Engineer, compacting, and finishing. When a section is reworked, a new optimum density will be determined from the reworked material in accordance with Test Method Tex-121-E, Part II.

**(8) Finishing and Curing.** After the final layer or course of the lime treated material has been compacted, it shall be brought to the required lines and grades in accordance with the typical sections.

The completed section shall then be finished by rolling with a pneumatic tire or other suitable roller as approved by the Engineer. The completed section shall be moist cured or prevented from drying by addition of an asphalt material at the rate of 0.05 to 0.20 gallons per square yard as determined by the Engineer. This material shall be the type shown on the plans. Curing shall continue for seven (7) days before further courses are added or traffic is permitted, unless otherwise approved by the Engineer.

However, the lime treated material may be covered by other courses, the day following finishing, when approved by the Engineer. When the plans provide for the treated material to be covered by other courses of material, the next course shall be applied within 14 calendar days after final compaction is completed, unless otherwise approved by the Engineer.

**260.5. Tolerances.** Tolerances shall conform to the following:

(1) **Density Tolerances.** The Engineer may accept the work providing not more than one (1) out of the most recent five (5) density tests performed is below the specified density, provided the failing test is no more than three (3.0) pounds per cubic foot below the specified density.

(2) **Grade Tolerances.** Finished grade tolerances shall be in accordance with Subarticle 132.3 (2).

**260.6. Measurement.** This Item will be measured as follows:

- (1) Lime.
- (a) Type A.

(i) **Hydrated Lime (Dry).** When Type A Hydrated Lime is used under "Dry Placing", the quantity of lime will be measured by the ton of 2000 pounds, dry weight.

(ii) **Hydrated Lime (Slurry).** When Type A Hydrated Lime is used under "Slurry Placing", the quantity of lime will be measured by the ton of 2000 pounds, dry weight of the hydrated lime used to prepare the lime slurry at the job site.

(b) **Type B.**

**Commercial Lime Slurry.** When Type B Commercial Lime Slurry is used, the quantity of lime will be calculated from the minimum percent

"Dry Solids Content" of the slurry previously agreed upon for the project by the Contractor and the Engineer. This figure will be multiplied by the weight of the slurry in tons delivered, which must be at or above the required minimum "Dry Solids Content".

(c) **Type C.**

(i) **Quicklime (Dry).** When Type C Quicklime is used under "Dry Placing", the quantity of lime will be measured by the ton of 2000 pounds, dry weight of the quicklime actually delivered on the road.

(ii) **Quicklime (Slurry).** When Type C Quicklime is used under "Slurry Placing", the quantity will be measured by the ton of 2000 pounds, dry weight of the quicklime used to prepare the hydrated lime slurry. The measured tonnage of Type C Quicklime will be multiplied by a conversion factor of 1.28 to give the quantity of equivalent hydrated lime, which will be the basis of payment.

(2) **Lime Treatment.** Lime treatment will be measured by the square yard of the depth specified to the lines and grades shown on the typical sections.

**260.7. Payment.** The work performed and materials furnished in accordance with this Item and measured as provided under "Measurement" will be paid for as follows:

(1) Lime. Lime will be paid for at the unit price bid for "Lime" of one of the following specified types, which price will be full compensation for furnishing all lime.

- (a) Type A (Dry)
- (b) Type A (Slurry)
- (c) Type B
- (d) Type C (Dry)
- (e) Type C (Slurry)

Lime for reworking a section in accordance with Subarticle 260.4.(7) will not be paid for directly but will be subsidiary to this Item.

(2) **Lime Treatment.** "Lime Treated Subgrade (Ordinary Compaction)" or "Lime Treated Subgrade (Density Control)" of the depth specified will be paid for at the unit price bid per square yard. This price shall be full compensation for shaping existing material, loosening, mixing, pulverizing, spreading, drying, applying lime, water content of the slurry, compacting, curing including curing materials, shaping and maintaining, processing, hauling, reworking if required, preparing secondary subgrade, and for all mixing water, tools, equipment, labor, and incidentals necessary to complete the work.

When proof rolling is shown on the plans and directed by the Engineer, it will be paid for in accordance with Item 216, "Rolling (Proof)".

When "Ordinary Compaction" is shown on the plans, all sprinkling and rolling, except proof rolling, will not be paid for directly but will be considered subsidiary to this Item, unless otherwise shown on the plans.

When "Density Control" is shown on the plans, all sprinkling and rolling, except proof rolling, will not be paid for directly but will be considered subsidiary to this Item.

When subgrade is constructed under this project, correction of soft spots will be at the Contractor's expense. When subgrade is not constructed under this project, correction of soft spots will be in accordance with Article 9.3.

When "Ordinary Compaction" is shown on the plans, all sprinkling and rolling, except proof rolling, will not be paid for directly but will be considered subsidiary to this Item, unless otherwise shown on the plans.

(3) **Water.** Water shall meet the material requirements of Item 204, "Sprinkling".

(4) **Asphalt.** Asphalt shall conform to the requirements of Item 300, "Asphalts, Oils and Emulsions".

#### 262.3. Equipment.

Equipment shall conform to the requirements of Article 260.3.

#### 262.4. Construction Methods.

(1) **General.** The completed course shall be uniformly treated, free from loose or segregated areas, of uniform density and moisture content, well bound for its full depth and shall have a smooth surface.

(2) **Preparation of Subgrade or Base.** Prior to treating existing material and/or placing any new material, the existing material shall be shaped to conform to the typical sections as shown on the plans or as established by the Engineer. This work shall be done in accordance with the applicable bid items. When shown on the plans, any existing ACP shall be removed and will be paid for in accordance with applicable bid items.

Before pulverizing or scarifying an existing material, when shown on the plans, and when directed by the Engineer, the Contractor shall proof roll the roadbed in accordance with Item 216, "Rolling (Proof)". Soft spots shall be corrected as directed by the Engineer.

(1) **Lime.** The lime shall meet the requirements of Item 264, "Lime and Lime Slurry", for the type of lime specified.

The Contractor shall have the option of selecting from the types shown on the plans the type of lime to be used. The Engineer shall be notified in writing before changing source or type.

All lime slurries used in "Slurry Placing" shall be furnished at or above the minimum "Dry Solids Content" as approved by the Engineer.

When the Contractor elects to use a cutting and pulverizing machine that will process the material to the plan depth, the Contractor will not be required to excavate to the secondary grade or windrow the material. This method will be permitted only if a machine is provided which will insure that the material is cut uniformly to the proper depth and which has cutters that will plane the secondary grade to a smooth surface over the entire width of the cut. The machine shall provide a visible indication of the depth of cut at all times.

In lieu of using the cutting and pulverizing machine, the Contractor shall excavate and windrow the material to expose the secondary grade to the typical sections, lines and grades as shown on the plans or as established by the Engineer.